

UNSAFE HAVENS: IMPROVING THIRD-PARTY ACCREDITATION OF WILDLIFE SANCTUARIES

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A number of animal “sanctuaries” and “rescue centers” operate across the United States and, in spite of their sympathetic names that attract visitors and donors, in fact neglect their animals and commit egregious violations of the Animal Welfare Act (AWA). Since United States Department of Agriculture (USDA) enforcement of the AWA is extremely weak, third parties have begun certifying and accrediting different facilities of captive animal care. This Note addresses the work of such third-party accreditors and argues that, while they can indeed play a valuable role in regulating wildlife sanctuaries and educating the public, they can only achieve these goals effectively through a more detailed and comprehensive accreditation framework. Part I gives relevant background on the AWA and identifies how its ambiguities and enforcement deficit create informational and regulatory gaps in which third-party accreditors can take meaningful action. Part II analyzes the accreditors themselves, revealing the limited extent of their coverage, the ideological rifts that divide them, and important contrasts in their processes and standards for accreditation. Part III turns to potential solutions for addressing this fractured landscape. It proposes a tiered and detailed accreditation system that more effectively communicates relevant information to prospective visitors and donors. It also evaluates and critiques several alternative solutions.

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INTRODUCTION

The Summer Wind Farms Sanctuary, a “non-profit, USDA licensed sanctuary for exotic birds, mammals and reptiles,”¹ closed in 2017.² The sanctuary described itself as “Michigan’s exotic animal haven,” offering educational tours to small groups and giving animals like bears, wild cats, and primates a “safe, well cared for environment” in which to “live out their lives.”³ This description masked a sinister reality. Investigations by the United States Department of Agriculture (USDA) revealed that the sanctuary had violated the Animal Welfare Act (AWA) more than two hundred times in three years.⁴ Among other violations, Summer Wind Farms provided inadequate veterinary care,⁵ kept animals in unsanitary enclosures,⁶ and “euthanized” a tiger by shooting it in the head.⁷

Summer Wind Farms is not an anomaly. Tiger Rescue, in spite of what its name might suggest, failed to treat animals’ skin wounds, kept tigers so malnourished that their ribs and hipbones protruded, and held camels in enclosures with “warped, bent and buckled” chain link fencing that exposed them to dangerous pointed wires.⁸ The San

¹ SUMMER WIND FARMS SANCTUARY, <http://www.swfsanctuary.org> (last visited Sept. 30, 2018).

² See Consent Decision and Order, *In re* Summer Wind Farm Sanctuary, AWA Docket No. 16-0036, 2017 WL 5580351 *1–3 (U.S.D.A. July 25, 2017) (detailing the conditions imposed on the facility and the order to “cease and desist” violations of the AWA).

³ SUMMER WIND FARMS SANCTUARY, *supra* note 1.

⁴ *Inside a Sham Sanctuary*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://investigations.peta.org/summer-wind-farms-sham-animal-sanctuary-michigan/> (last visited July 5, 2018).

⁵ See *id.* (describing a formal citation for “failing to provide three endangered ring-tailed lemurs, who appeared thin and had sparse coats, with veterinary care”).

⁶ See *id.* (“Enclosures for Asiatic black bears and American black bears were strewn with feces. A grizzly bear’s water was covered with algae, and a meat cooler had the same stench of rotten and decaying meat that had already been noted in inspection reports dating back years.”).

⁷ *Id.*; see also Delcianna J. Winders, *Captive Wildlife at a Crossroads – Sanctuaries, Accreditation, and Humane-Washing*, 6 ANIMAL STUD. J. 161, 164–65 (2017) (describing how Summer Wind Farms “rack[ed] up scores of citations”).

⁸ See *In re* Tiger Rescue, 67 Agric. Dec. 467, 470–77 (U.S.D.A. 2008) (listing findings of fact on animal mistreatment); see also Akilah Johnson & Steve Hymon, *Rescuer’s Home*

Antonio Zoo has faced litigation over whether its elephant enclosures have provided adequate shelter to Lucky, a 57-year-old elephant, and whether the ground surface of Lucky's shelter has caused arthritic pain and walking difficulties.⁹ The Spirit of the Hills Wildlife Sanctuary in South Dakota housed “at least a dozen animals showing signs of malnutrition” and others with open wounds, prompting a different sanctuary to intervene and relocate more than two hundred large cats and bears.¹⁰ And the Pittsburgh Zoo and Aquarium, which until 2017 was certified by the Association of Zoos & Aquariums (AZA),¹¹ and in November 2016 received a similar certification from American Humane Conservation (AHC),¹² over-chlorinated the tanks of marine animals, deprived sea lions of adequate shade, and failed to address a flooding issue that resulted in the death, by hypothermia, of dozens of bats.¹³

These narratives illustrate distinct but related problems in animal law. First is the poor treatment of many animals housed at organizations of captive care. Second, the terms that these facilities use to brand themselves are difficult to define, much less regulate.¹⁴ Nearly a hundred entities in the United States self-identify as animal “sanctuar[ies],” “haven[s],” and “refuge[s]”—words with little or no formal

Full of Dead Tigers, CHI. TRIB. (Apr. 24, 2003), http://articles.chicagotribune.com/2003-04-24/news/0304240300_1_tiger-rescue-exotic-animals-dead-tigers (noting that investigators “discovered more than 90 dead tigers, including 58 cubs stuffed into freezers” as well as “tiger and leopard cubs crawling around the home’s attic, two small alligators swimming in the bathtub and two hungry tigers roaming around the porch”).

⁹ See *Graham v. San Antonio Zoological Soc’y*, 261 F. Supp. 3d 711, 752 (W.D. Tex. 2017) (finding triable issues of fact on whether the zoo “is harming and harassing Lucky by providing an enclosure with an inappropriate substrate and inadequate shelter from the sun”).

¹⁰ See Robert Grant, *USDA Releases Critical Report on Spirit of the Hills Wildlife Sanctuary*, KEVN BLACK HILLS FOX (Nov. 3, 2016, 6:53 PM), <http://www.blackhillsfox.com/content/news/USDA-releases-critical-report-on-Spirit-of-the-Hills-Wildlife-Sanctuary-399928101.html> (reporting problems at the sanctuary); *South Dakota Rescue 2016*, LIONS, TIGERS & BEARS, <https://lionstigersandbears.org/south-dakota-rescue-2016/> (last visited July 5, 2018) (discussing relocation efforts).

¹¹ See Matthew Santoni, *Pittsburgh Zoo Splits with National Group over Elephant Care Standards*, TRIB. LIVE (Aug. 17, 2015, 11:42 AM), <http://triblive.com/news/adminpage/8930414-74/aza-zoo-pittsburgh> (describing how the zoo and AZA parted ways based on disagreements over the management of zookeeper interactions with elephants).

¹² See *Pittsburgh Zoo & PPG Aquarium Achieves Humane Certification for Animal Welfare*, AM. HUMANE (Nov. 21, 2016), <https://www.americanhumane.org/press-release/pittsburgh-zoo-ppg-aquarium-achieves-humane-certification-for-animal-welfare/> (last visited July 5, 2018) (“The Pittsburgh Zoo & PPG Aquarium passed a rigorous third-party audit to earn the prestigious American Humane Conservation seal of approval.”).

¹³ See Winders, *supra* note 7, at 167 (discussing these and other AWA violations at the zoo).

¹⁴ See *infra* Section I.B (describing terminological and other regulatory gaps in captive care).

legal meaning.¹⁵ Third, there is a “perhaps even more insidious[] phenomenon” that lies in the “creation of various bodies that purport to accredit facilities holding captive wild animals.”¹⁶ These bodies, like AHC and AZA, are non-governmental entities that develop their own guidelines and animal welfare standards and, based on an application, may offer a stamp of approval to sites of captive care.¹⁷ The accreditors’ revenue comes mostly from voluntary contributions,¹⁸ and their imprimatur may help attract visitors, raise funds, and provide a link to similar sites within the accredited network.¹⁹

The latter two problems inflict a kind of informational harm on consumers. Ecologist Tom Moorhouse has shown that, while tourists assume that wildlife care sites are well regulated, they are poor judges of actual welfare conditions and thus would benefit from additional guidance.²⁰ Unlike a formal inspection, a tailored tour can exhibit

¹⁵ See Winders, *supra* note 7, at 164 (“[A] review of animal dealers and exhibitors regulated under the federal Animal Welfare Act . . . 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.’”) (internal citations omitted); see also *Find a Sanctuary*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/find-a-sanctuary/?animal=any®ion=NA&state=any> (last visited July 6, 2018) (listing accredited facilities that include a “primate sanctuary,” a “retirement center” for horses, a “chimp haven,” “rescues,” and a “donkey shelter”).

¹⁶ Winders, *supra* note 7, at 165. The captive care industry is vast. See Mike Thomas, *Study Shows Zoos Have Big Economic Impact*, SAN ANTONIO BUS. J. (June 10, 2011, 11:20 AM), <https://www.bizjournals.com/sanantonio/blog/2011/06/study-shows-zoos-have-big-economic.html> (noting that AZA-accredited institutions alone “result in \$16 billion in economic activity every year” and “employ 142,000 people, provide \$4.7 billion in wages and salaries and serve 179 million visitors annually”).

¹⁷ See *infra* Part II (discussing in greater detail the landscape of third-party accreditors).

¹⁸ See, e.g., *Non-Profit Explorer: Global Federation of Animal Sanctuaries*, PRO PUBLICA, <https://projects.propublica.org/nonprofits/organizations/261676217> (last visited July 6, 2018) (listing Global Federation of Animal Sanctuaries (GFAS) tax filings for several recent years, up to 2015, and showing that roughly 90% of revenue came from contributions in 2015).

¹⁹ See *Benefits of Accreditation*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/benefits-of-accreditation> (last visited July 6, 2018) (listing benefits including increased “public confidence,” improved ability to attract qualified staff, and access to the association’s services and programs).

²⁰ See Tom Moorhouse, Neil C. D’Cruze & David W. Macdonald, *Unethical Use of Wildlife in Tourism: What’s the Problem, Who Is Responsible, and What Can Be Done?*, 25 J. SUSTAINABLE TOURISM 505, 508 (2017) (describing a study showing that “only a minority of tourists was alert to welfare conditions” at wildlife tourist sites) (citing Tom Moorhouse et al., *The Customer Isn’t Always Right – Conservation and Animal Welfare Implications of the Increasing Demand for Wildlife Tourism*, PLOS ONE (Oct. 21, 2015), <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0138939&type=printable> (finding that a majority of tourists visiting wildlife tourist sites were not alert to welfare conditions at the sites)). See also S.R. Ross et al., *Inappropriate Use and Portrayal of Chimpanzees*, 319 SCIENCE 1487, 1487 (2008) (describing an experiment in which respondents harbored mistaken beliefs about chimpanzee endangerment, as compared to

facilities selectively, emphasizing the healthy and concealing the harmful. This issue impacts not just visitors, but also academics searching for appropriate research sites, or activists looking to relocate animals from a closed-down circus or laboratory.

Delcianna Winders, Vice President and Deputy General Counsel for Captive Animal Law Enforcement at People for the Ethical Treatment of Animals (PETA), frames the informational problem as “humane-washing,” which she defines as using “unregulated terms like ‘sanctuary’ and participating in misleading accreditation programs” in order to “profit[] from making consumers feel better.”²¹ Professor Sarah Dadush more generally theorizes such issues as “identity harm.”²² While scholars have focused on other dimensions of captive care,²³ there is virtually no attention to public understanding of labels like “refuge” and “sanctuary,” what precisely visitors know about third-party accreditors and the distinctions among them, or the legal measures that could help expose facilities that do not live up to proper standards.²⁴ Simply put: “[W]e have questions to grapple with and work to do.”²⁵ This Note begins that work.

I contend that third-party accreditors can play a valuable role in addressing the incongruity presented by so-called sanctuaries that dupe visitors and abuse animals. However, in order to do so effectively, a more comprehensive accreditation framework needs to be developed. This framework should include tiers of accreditation and more detailed seals of approval. Such incremental changes would help

gorillas and orangutans, in part because “chimpanzees were commonly seen on television, advertisements, and movies and, therefore, must not be in jeopardy”).

²¹ Winders, *supra* note 7, at 161; *cf.* *About Greenwashing*, GREENWASHING INDEX, <http://www.greenwashingindex.com/about-greenwashing/> (last visited July 9, 2018) (“It’s greenwashing when a company or organization spends more time and money claiming to be ‘green’ through advertising and marketing than actually implementing business practices that minimize environmental impact.”).

²² Sarah Dadush, *Identity Harm*, 89 U. COLO. L. REV. 863, 865 (2018) (arguing that “identity harm arises when a consumer learns that a purchase made her unwittingly complicit in hurting another human being or the planet,” such as when companies fail to honor their promises about “organic, animal cruelty-free, Kosher, Made in the U.S.A.” or similar products).

²³ See, e.g., IRUS BRAVERMAN, *ZOOLAND: THE INSTITUTION OF CAPTIVITY* (2013) (exploring the inner administrative workings of zoos); *THE ETHICS OF CAPTIVITY* (Lori Gruen ed., 2014) (discussing how confinement affects specific species, alongside philosophical reflections on captivity); Jesse Donahue, *Introduction: The Legal Landscape and Possibilities for Change*, in *INCREASING LEGAL RIGHTS FOR ZOO ANIMALS: JUSTICE ON THE ARK* xiii, xx–xxiii (Jesse Donahue ed., 2017) (summarizing contributions on reintroductions of zoo animals into the wild, the use of captive animals in research, international case studies, and a comparison of zoos and sanctuaries).

²⁴ See Winders, *supra* note 7, at 168 (raising questions posed by the rise of third-party accreditors and ending the inquiry there).

²⁵ *Id.* at 169.

account for how the different missions of accreditation bodies advance a range of captive care models, capture the accreditors' distinctive criteria for certification, and more effectively publicize information to the interested visitor, activist, donor, or researcher.

In Part I, I identify the legal vacuum that leaves room for third-party accreditors to step into the regulatory infrastructure surrounding sanctuaries and other sites of captive care. In Part II, I analyze the five organizations that have entered this space—a holistic account that is lacking in the academic literature.²⁶ I demonstrate that these groups form an unsatisfactory, patchy collective that advances different ideologies and uneven standards. In Part III, I turn to solutions. Drawing on literature concerning food labeling and global tourism, I propose a tiered accreditation scheme with more detailed accreditation seals and integration with online platforms to disseminate relevant information. I also critique other solutions—some modest, some ambitious—with the goal of generating further scholarly engagement with the question of how to improve the current accreditation scheme.

I

REGULATORY GAPS IN THE WORLD OF CAPTIVE CARE

Third-party accreditors can play a valuable role in deepening information on and oversight of the regulation of captive care, which suffers from legal ambiguities and enforcement deficits. In this Part, I provide background on captive care in order to highlight its long-standing complexities. I then outline aspects of the existing legal

²⁶ See Katherine A. Burke, *Looking for a Nexus Between Trust, Compassion, and Regulation: Colorado's Search for Standards of Care for Private, Non-Profit Wildlife Sanctuaries*, 12 ANIMAL L. 39, 53–68 (2005) (arguing that AZA standards are “inappropriate” for wildlife sanctuaries, as compared to the standards of the now-defunct Association of Sanctuaries); Ron Kagan, *Sanctuaries: Zoos of the Future?*, in INCREASING LEGAL RIGHTS FOR ZOO ANIMALS 131, 137–41 (Jesse Donahue ed., 2017) (comparing only GFAS and AZA standards on certain “key factors affecting animal welfare”); Aaron Kornfield, *An Elephant Never Forgets: Pachyderms, Politics, and Policy at the San Francisco Zoo*, 1 J. ANIMAL L. & ETHICS 205, 214 (2006) (criticizing AZA’s standards for elephants); Winders, *supra* note 7, at 165–67 (offering a brief critique of American Humane Conservation and the Zoological Association of America (ZAA)); HUMANE SOC’Y OF THE U.S., FACTSHEET: EXEMPTING THE ZOOLOGICAL ASSOCIATION OF AMERICA (ZAA) SEVERELY WEAKENS LAWS AND REGULATIONS INTENDED TO RESTRICT THE PRIVATE POSSESSION OF DANGEROUS WILD ANIMALS TO QUALIFIED FACILITIES (Jan. 24, 2014), <https://bigcatrescue.org/wp-content/uploads/2014/07/ZAA-Factsheet.pdf> (tabulating several ZAA and AZA standards for comparison); Rachel Garner, *How to Understand Zoo Accreditation, WHY ANIMALS DO THE THING* (July 18, 2016), <https://www.whyanimalsdothething.com/how-to-understand-zoos-accrediation/?rq=How%20to%20Understand%20Zoo%20Accreditation> (relying on accreditors’ guidance documents to give a more detailed summary of GFAS, AZA, and ZAA accreditation standards).

framework that allow third-party accreditors to enter the fray and fill an important regulatory gap.

A. Background on Animal Exhibition and the Practice of Captive Care

The exhibition of captive wildlife is an age-old practice. Roman and Greek citizens watched animal fights.²⁷ The “running of the bulls” in Pamplona has been a spectacle since the late sixteenth century.²⁸ The “modern circus” emerged in the late eighteenth century,²⁹ and an aquarium industry arose in the 1960s.³⁰

Sanctuaries often situate themselves in opposition to this allegedly expedient, exhibitionist tradition. One article promoting sanctuaries paints the following contrast:

Too often in the media, you hear the dark side of animal cruelty. Festivals where dogs are abused . . . , elephants tortured to learn tricks, and tigers treated in the same manner. For every animal abused though there are many who are rescued and saved from mistreatment. These animals live on, protected by brave people and organizations³¹

The author goes on to list organizations embodying the “light side.” These are places where visitors feed elephants and give them mud baths, hold koalas, or “rub the belly of a pig, frolic with goats and feed the chickens”³² Other organizations that garner public approval offer similar experiences: feeding hedgehogs; hugging, bathing, and riding elephants; or grooming donkeys.³³ Yet we should hesitate before assuming that such interactions with animals are as friendly they appear. Even innocent-seeming sanctuaries are places of

²⁷ Jacqueline Neumann, Note, *Redefining the Modern Circus: A Comparative Look at the Regulations Governing Circus Animal Treatment and America’s Neglect of Circus Animal Welfare*, 36 WHITTIER L. REV. 167, 168 (2014) (citing GEORGE JENNISON, ANIMALS FOR SHOW AND PLEASURE IN ANCIENT ROME 1 (1937)).

²⁸ Randy James, *A Brief History of the Running of the Bulls*, TIME (July 7, 2009), <http://content.time.com/time/nation/article/0,8599,1908948,00.html>.

²⁹ See Neumann, *supra* note 27, at 170 (discussing the development of the circus).

³⁰ See Isabella Langone, Note, *Changing Tides for Captive Marine Mammals: What the Future Holds for Captive Care Requirements*, 68 HASTINGS L.J. 419, 419 (2017).

³¹ Meghan Werft, *10 Awesome Animal Sanctuaries to Visit Around the World*, GLOBAL CITIZEN (Apr. 18, 2016), <https://www.globalcitizen.org/en/content/10-awesome-animal-sanctuaries-to-visit-around-the/>.

³² *Id.*

³³ See, e.g., Zion Lights, *10 Global Sanctuaries That Are Transforming the Lives of Animals*, ONE GREEN PLANET (Apr. 8, 2013), <http://www.onegreenplanet.org/animalsandnature/10-global-sanctuaries-that-are-transforming-the-lives-of-animals/> (positively characterizing sanctuaries when visitors can have these kinds of experiences).

immense philosophical and ethical ambiguity.³⁴ Professor Joan Schaffner suggests that the ethical dilemma is “of special concern” for captive wildlife.³⁵ It is also not clear that humans draw appropriate conclusions about animal populations, behavior, and welfare from wild animal interaction.³⁶

For the purposes of this Note, I use the following definitions, acknowledging that the lines separating different facilities may often be blurry. “Sanctuaries” generally refer to places that “provide life-time care for animals that have been abused, injured, abandoned, or are otherwise in need. These animals often come from private owners, research laboratories, government authorities, the entertainment industry, and zoos.”³⁷ “Rescue centers” are sites that “temporarily care for animals with the goal of placing them in permanent ownership/foster care with approved members of the public, or with accredited or verified sanctuaries.”³⁸ By contrast, a “zoo” can be defined as “a *permanent* institution which owns and maintains wildlife, under the direction of a professional staff, provides its animals with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled, predictable basis” in addition to “having as a core mission the exhibition, conservation, and preservation of the earth’s fauna in an educational and scientific manner.”³⁹ Finally, the term

³⁴ See Elan Abrell, *Lively Sanctuaries: A Shabbat of Animal Sacer*, in ANIMALS, BIOPOLITICS, LAW: LIVELY LEGALITIES 134, 149 (Irus Braverman ed., 2016) (“Human and nonhuman animals in sanctuaries form . . . multispecies assemblages through which they share intersubjective experiences with each other, generating their own atmospheres of animal legality in which oppositions between human/animal, freedom/captivity, care/control, and subject/property are both challenged and reconfigured.”); see also Matt Ampleman & Douglas A. Kysar, *Living with Owning*, 92 IND. L.J. 327, 363 (2016) (discussing the ambiguity in using laws premised on stewardship to combat the inherent violence of animal captivity).

³⁵ JOAN E. SCHAFFNER, AN INTRODUCTION TO ANIMALS AND THE LAW 96 (2011). See also *id.* at 97 (arguing that there could be benefits in the “respect” and “appreciation” that humans gain for animals by seeing them in the flesh, but noting that spectators are not likely to witness animals “engaging in their natural behavior”).

³⁶ See, e.g., Carney Anne Nasser, *Welcome to the Jungle: How Loopholes in the Federal Endangered Species Act and Animal Welfare Act Are Feeding a Tiger Crisis in America*, 9 ALBANY GOV’T L. REV. 194, 205 n.66 (2016) (“Often, the presence of endangered species in public exhibitions leads to erroneous public perceptions that such species are not in fact endangered.”). Nasser describes a study about chimpanzee interaction, which suggests that when spectators see endangered species exhibited “in close proximity to a human,” they “incorrectly assume that wild populations of such species are plentiful.” *Id.* (citing Stephen R. Ross et al., *Specific Image Characteristics Influence Attitudes About Chimpanzee Conservation and Use as Pets*, 6 PLoS ONE, no. 7, July 13, 2011, at 1, 3).

³⁷ *Who Can Apply*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/for-sanctuaries-2/definitions/> (last visited July 11, 2018).

³⁸ *Id.*

³⁹ *FAQs*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/accred-faq> (last visited July 11, 2018) (emphasis added); see also Kagan, *supra* note 26, at 137 (noting that zoos

“wildlife” is to be understood broadly as any undomesticated animal.⁴⁰

These definitions outline the competing values of different institutions: temporary or permanent care, education, conservation, and exhibition. As the next Section shows, the formal legal and regulatory world wrestles with some of these values but does not achieve even the above level of detail. This shortcoming, coupled with major enforcement gaps, leaves plenty of room for third-party accreditors to play an important role in enhancing public understanding of captive care institutions and in channeling donor and visitor resources.

B. *The Uncertain Legal Framework for Wildlife Sanctuaries*

The laws surrounding captive wildlife are byzantine.⁴¹ The main federal law governing possession of animals is the AWA.⁴² The AWA was passed in 1966 in order to “ensure the humane treatment of animals that are intended for research, bred for commercial sale, exhib-

give “ultimate priority . . . to exhibition, care, conservation, and education” while sanctuaries are “solely devoted to the care of individual animals and advocacy”).

⁴⁰ See *Wildlife*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/wildlife> (last visited Sept. 21, 2018) (defining wildlife as “living things and especially mammals, birds, and fishes that are neither human nor domesticated”). Compare *Wildlife Crime*, CITES, <https://cites.org/prog/icwcw.php/Wildlife-Crime> (last visited Mar. 12, 2018) (“‘Wildlife’ means all fauna and flora.”), with *Endangered Species Act — Overview*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/endangered/laws-policies/> (last updated Nov. 1, 2017) (“‘Threatened’ means a species is likely to become endangered within the foreseeable future. *All species of plants and animals*, except pest insects, are eligible for listing as endangered or threatened.”) (emphasis added), and *State v. Couch*, 147 P.3d 322, 327 (Or. 2006) (weighing definitional arguments against broad legislative enactments and concluding that “‘wildlife’ means whatever the legislature says that it means”).

⁴¹ See Alyce Miller & Anuj Shah, *Invented Cages: The Plight of Wild Animals in Captivity*, 1 J. ANIMAL L. 23, 42 (2005) (“The United States currently offers a veritable maze of laws and regulations addressing the private possession of exotic animals . . .”).

⁴² 7 U.S.C. §§ 2131–2159 (2012). In addition to the AWA, other federal statutes protect wild animals but their focus does little to help animals that exist at licensed institutions, whether termed a sanctuary or zoo or rescue. The Endangered Species Act (ESA) was passed in 1973 and imposes criminal and civil penalties for any “taking,” defined broadly to include acts “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” protected animals. 16 U.S.C. § 1532(19) (2012). These provisions and penalties, while broader than other legal protections for animals, focus on activities such as trafficking, trade, and hunting, rather than on questions of how to define or police captive care. See SCHAFFNER, *supra* note 35, at 100–03 (discussing litigation on the application of the ESA “take” provision to captive wildlife). The ESA delegates to the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service the task of “listing and delisting species” that the agencies deem to be “endangered” and “threatened.” See Miller & Shah, *supra* note 41, at 43. The Lacey Act, similarly, focuses on trade: imposing penalties on those who “import, export, transport, sell, receive, acquire, or purchase” protected fish, wildlife, and plants. 16 U.S.C. §§ 3372, 3371–3378 (2012).

ited to the public, or commercially transported.”⁴³ The AWA delegates enforcement to the USDA.⁴⁴

Within the USDA, the governmental organ that “actually develops and implements regulations” is the Animal Plant and Health Inspection Service (APHIS).⁴⁵ APHIS also has an Animal Care (AC) division. Both APHIS and AC are in turn supported by the Investigative and Enforcement Services (IES), which “‘investigates violations’” and “‘reviews and processes violation cases.’”⁴⁶

For the purposes of this Note, the most relevant provisions of the AWA are those that define terms related to the exhibition animals and the various types of facilities that might be regulated or excluded. Section 2132, whose list of definitions does not include terms such as “sanctuary,” defines an “exhibitor” as “any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation.”⁴⁷ The Act covers “carnivals, circuses and zoos exhibiting such animals whether operated for profit or not” but excludes certain pet stores, “country fairs” and “livestock shows,” and “any other fairs or exhibitions intended to advance agricultural arts and sciences.”⁴⁸ The Secretary of Agriculture or employees of the USDA are charged with making these determinations.⁴⁹

The regulations that these agencies promulgate “allow for much discretion in interpretation. On the one hand, this is necessary for the regulation[s] to accommodate a variety of exhibits; on the other hand, it does not guarantee that exhibition animals will be free from harm.”⁵⁰ With reference to sanctuaries, the regulations are particularly hazy. While circuses and zoos attract criticism for their commercial exploitation of animals, the law also imagines the possibility of zoos or even circuses that do not operate for profit.⁵¹ Yet in reality such non-profit entities must also rely on some degree of commercial-

⁴³ TADLOCK COWAN, CONG. RESEARCH SERV., RS22493, *THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ANIMAL WELFARE LEGISLATION* 1 (2016).

⁴⁴ Miller & Shah, *supra* note 41, at 42.

⁴⁵ *Id.* at 42.

⁴⁶ *Id.* (quoting ANIMAL WELFARE INST., *ANIMAL DEALERS: EVIDENCE OF ABUSE OF ANIMALS IN THE COMMERCIAL TRADE 1952-1997*, at 349-50 (Mary Ellen Drayer ed., 1997)).

⁴⁷ 7 U.S.C. § 2132(h) (2012); *see also* Neumann, *supra* note 27, at 181-82 (discussing the definition with reference to circus regulation).

⁴⁸ 7 U.S.C. § 2132(h) (2012) (emphasis added).

⁴⁹ *Id.* §§ 2132(b), 2132(h).

⁵⁰ SCHAFFNER, *supra* note 35, at 93-94.

⁵¹ *See* 7 U.S.C. § 2132(h) (2012) (regulating those “exhibiting . . . animals whether operated for profit or not”).

zation in order to remain viable. The Wild Animal Sanctuary in Colorado, with over 720 acres of outdoor and indoor space for animals, relies on both entrance fees and donations.⁵² Commercial classifications and the requirement that animals be “exhibit[ed] . . . for compensation,” erect unsatisfying and porous boundaries of legal definition.⁵³

APHIS guidelines do not supply the needed clarification. The Animal Care division notes that there are some “regulated animal exhibitors,” which it considers to be those individuals or institutions that display “warmblooded animals” and use them for performance or educational purposes.⁵⁴ Such exhibitors “include circuses, zoos, petting farms/zoos, animal acts, wildlife parks, marine mammal parks, and some sanctuaries.”⁵⁵ When detailing the “exempted animal exhibitors,” APHIS adds that “[a]nimal preserves, or sanctuaries that maintain exotic or wild animals, are exempt from regulation provided they do not exhibit or use the animals for promotional purposes, including fundraising, or sell animals.”⁵⁶ Selling animals may be a reasonable practice to forbid and define, but prohibitions on “use” for “promotional purposes” and “fundraising” are murkier. Would a facility be “using” an animal for fundraising purposes if it were to allow an online donor to virtually “adopt” an animal and gain the privilege of visiting,⁵⁷ or to set up a permanent webcam?⁵⁸

⁵² See *Visit the Sanctuary*, WILD ANIMAL SANCTUARY, <https://www.wildanimalsanctuary.org/visit-us> (last visited July 12, 2018) (offering visit details and a promotional video that highlights amenities including a restaurant and picnic areas); see also Langone, *supra* note 30, at 428 (estimating the cost of a marine sanctuary in open seas at close to \$5 million dollars, plus annual upkeep of \$500,000) (citing Samantha Masunaga, *Here's Why SeaWorld Probably Won't Release Its Whales into the Wild*, L.A. TIMES (Mar. 17, 2016, 12:20 PM), <http://www.latimes.com/business/la-fi-seaworld-sea-pens-20160317-htmlstory.html>); Tim Zimmermann, *The Monumental Plans that Could Set Captive Orcas Free*, THE DODO (Mar. 22, 2014), <https://www.thedodo.com/the-monumental-plans-that-coul-479028620.html>.

⁵³ See 7 U.S.C. § 2132(h) (2012).

⁵⁴ ANIMAL CARE FACTSHEET, ANIMAL & PLANT HEALTH INSPECTION SERV. 1 (Feb. 2012) (on file with author).

⁵⁵ *Id.* (emphasis added).

⁵⁶ *Id.*

⁵⁷ See *Adopt an Animal*, INT'L EXOTIC ANIMAL SANCTUARY, <http://www.bigcat.org/adopt-an-animal> (last visited July 12, 2018) (offering a “monthly, accompanied visit with the animal” in exchange for donative support). See also KATHY RUDY, *LOVING ANIMALS: TOWARD A NEW ANIMAL ADVOCACY* 119–20 (2011) (noting that it can be “hard to raise funds” for land and animal protection in “faraway places” because “humans long to at least be able to see the animals their money supports and perhaps even interact with them”).

⁵⁸ See *Elecama*, THE ELEPHANT SANCTUARY IN TENN., <https://www.elephants.com/elecama> (last visited July 12, 2018) (“We use a system of solar-powered cameras to locate and monitor the elephants; to provide distance learning opportunities to schools and groups around the globe; and to offer you, our friends and supporters, frequent glimpses of the elephants we are so fortunate to have in our care.”).

The only additional federal guidance has come from the FWS. In issuing regulations under the Captive Wildlife Safety Act (CWSA), which amends the Lacey Act to prohibit the sale, transfer, or acquisition of lions, snow leopards, cougars, and other large cats, FWS has offered a definition of an “[a]ccredited wildlife sanctuary.”⁵⁹ Its content, though, is minimal: A sanctuary is a 501(c)(3) organization that does not “commercially trade” in wildlife species or body parts and products, does not “propagate” any species, and “does not allow any direct contact between the public and the prohibited wildlife species.”⁶⁰ The language of “accreditation” in the definition refers only to approval by the Internal Revenue Service, rather than to accreditation processes centered on the conditions of animal care.⁶¹

Under this regulation, the definitions of “direct contact” and “propagate”⁶² are ambiguous. The regulations may be targeting physical contact, which can be harmful to animals even if well intentioned.⁶³ But consider again the virtual “adoption” example.⁶⁴ Perhaps a small number of site visits would not be considered direct contact, but the guidance does not elaborate.⁶⁵ And many sanctuaries, which may invite fewer visitors than zoos, still offer daily tours to groups that request them, thus exposing animals to a significant number of observers.⁶⁶ As for propagation, the regulations may be targeting pernicious breeding programs, but there is not a clear carve-out for programs that aim to release animals into their natural, wild habitat and thus directly impact species survival.⁶⁷ The CWSA’s defi-

⁵⁹ See 50 C.F.R. § 14.252 (2018); see also *Regulations to Implement the Captive Wildlife Safety Act*, BIG CAT RESCUE (June 2, 2011), <https://bigcatrescue.org/regulations-to-implement-the-captive-wildlife-safety-act/> (describing the statute and regulations).

⁶⁰ 50 C.F.R. § 14.252 (2018).

⁶¹ See *id.* (“Accredited wildlife sanctuary means a facility that cares for live specimens of one or more of the prohibited wildlife species and . . . [i]s approved by the United States Internal Revenue Service as a corporation that is exempt from taxation under § 501(a) of the Internal Revenue Code of 1986 . . .”).

⁶² See *id.*

⁶³ See generally MARC BEKOFF, *THE EMOTIONAL LIVES OF ANIMALS* (2007) (arguing that animals have rich emotional experiences that include grief, anger, and distress).

⁶⁴ See *supra* note 57 and accompanying text.

⁶⁵ 50 C.F.R. § 14.252 (2018) (“Direct contact means any situation in which any individual other than an authorized keeper or caregiver may potentially touch or otherwise come into physical contact with any live specimen of the prohibited wildlife species.”).

⁶⁶ See, e.g., *Tickets*, BIG CAT RESCUE, <https://bigcatrescue.org/tickets/> (last visited July 12, 2018) (listing a range of ticket options for tours on all but a small number of days a year); *Tours*, INT’L EXOTIC ANIMAL SANCTUARY, <http://www.bigcat.org/tours> (last visited July 12, 2018) (“There are regularly scheduled tours each weekend, and we offer tours every weekday at 11am as well.”).

⁶⁷ See 50 C.F.R. § 14.252 (2018) (“Propagate means to allow or facilitate the production of offspring of any of the prohibited wildlife species, by any means.”).

nition of a sanctuary may cleave away more than it intends, and it has not yet been further developed in administrative action or litigation.

Case law has not succeeded either in developing much coherence in the legal lines separating different institutions. In *Haviland v. Butz*,⁶⁸ for example, the D.C. Circuit held that a mobile “dog and pony show” was covered under the “exhibitor” regulations, on the grounds that it was similar to circuses and carnivals.⁶⁹ The court struggled, though, to differentiate the plaintiff’s act from rodeos, which enjoy a specific exemption even though they are known theaters of animal abuse.⁷⁰ The court simply fell back on a question of resources: “[I]n trying to find a reasonable explanation for the exclusion, [the court] stated that some members of Congress expressed a general concern for the cost of administering the AWA.”⁷¹

In sum, at the federal level, wildlife sanctuaries and similar captive care sites exist in a poorly defined “gray area,”⁷² whose definitional contours turn on questions of exhibition and commercial use. The ambiguities are only compounded by a massive enforcement shortfall. Places that “exhibit” animals will be subject to AWA inspections and must comply with statutory standards for “sanitary conditions, sufficient enclosures, proper vet care, appropriate feed, and the like.”⁷³ Yet these standards are extremely lax. It is “extraordinarily easy” to get a USDA exhibitor license, and applicants need only pay a small fee and demonstrate a “bare minimum of standards.”⁷⁴ Since the USDA only employs roughly one hundred “inspectors” for several thousand sites of captive care, consistent and reliable oversight is near impossible.⁷⁵ And even in *successful* cases, the USDA has operated poorly.⁷⁶ To make matters worse, license renewals can occur without

⁶⁸ 543 F.2d 169 (D.C. Cir. 1976).

⁶⁹ *Id.* at 172, 173–75.

⁷⁰ *Id.* at 176–77.

⁷¹ SCHAFFNER, *supra* note 35, at 92 (citing *Butz*, 543 F.2d at 176 n.53).

⁷² Rachel Hartigan Shea, *Are Wildlife Sanctuaries Good for Animals?*, NAT’L GEOGRAPHIC (Mar. 20, 2014), <https://news.nationalgeographic.com/news/2014/03/140320-animal-sanctuary-wildlife-exotic-tiger-zoo/>.

⁷³ *Id.*

⁷⁴ See, e.g., Kevin Loria, *A \$40 Loophole Allows Almost Anyone to Own a Lion, Tiger, or Bear*, BUS. INSIDER (Mar. 22, 2016, 1:02 PM), <http://www.businessinsider.com/usda-exhibitors-license-allows-almost-anyone-to-own-a-tiger-or-lion-2016-3> (describing the ease of obtaining a USDA license to exhibit wild animals).

⁷⁵ OFFICE OF INSPECTOR GEN., U.S. DEP’T OF AGRIC., 33601-0001-41, ANIMAL AND PLANT HEALTH INSPECTION SERVICE OVERSIGHT OF RESEARCH FACILITIES 5 (2014) (noting that 125 inspectors were responsible for 8656 facilities in 2010, among other enforcement shortfalls).

⁷⁶ See *Kollman Ramos v. U.S. Dep’t of Agric.*, 322 F. App’x 814, 824 (11th Cir. 2009) (referring to the USDA action as “virtually glacial” and “hardly represent[ing] ‘best practice’ by a government agency”).

additional site visits, and animal rights advocates have had little success in challenging such agency actions in court.⁷⁷

Federal law is not the only relevant domain. Since the AWA establishes a floor, states and local governments can “provide[] broader and stricter regulations for the humane care and treatment of animals.”⁷⁸ Some states have done so.⁷⁹ However, very few have attempted to define and clarify the meaning of terms like “sanctuary.” Maryland, for example, defines a sanctuary in part as an organization that “does not buy, sell, trade, lease, or breed any animal except as an integral part of the species survival plan of the American Zoo and Aquarium Association.”⁸⁰ An Ohio law, passed after an infamous tragedy in Zanesville, where a man (before taking his own life) released dozens of captive wild animals into the streets,⁸¹ outlaws the sale and possession of certain animals but exempts members of the third-party accreditors, AZA, Global Federation of Animal Sanctuaries (GFAS), and ZAA.⁸² Colorado also involves AZA, as well as GFAS, in its Department of Wildlife licensing protocols.⁸³

This state-level action distills two important features of the existing regulatory system. First, terms like “sanctuary,” or even “zoo” or “rescue,” remain largely undefined as a formal matter, even where there is a more rigorous animal welfare regime. That is, the first problem I identified in the Introduction may in some states be less severe, but the informational pitfalls and harms persist. Second, the deference given to third-party accreditors, such as providing exemptions for its members or accredited entities, confirms that there is, indeed, a regulatory gap that such non-governmental entities can help to fill.

⁷⁷ See *Animal Legal Def. Fund v. Perdue*, 872 F.3d 602, 616–18 (D.C. Cir. 2017) (giving the USDA broad deference when interpreting and implementing its mandate to issue exhibitor licenses).

⁷⁸ ANIMAL CARE FACTSHEET, *supra* note 54, at 2.

⁷⁹ See ANIMAL LEGAL DEF. FUND, 2016 U.S. ANIMAL PROTECTION LAWS RANKINGS 11–12 (2017) (tabulating the five best and worst states on factors such as felonies for animal abuse and police duties to enforce animal protection laws).

⁸⁰ MD. CODE ANN., CRIM. LAW § 10-621 (West 2014).

⁸¹ See Chris Heath, *18 Tigers, 17 Lions, 8 Bears, 3 Cougars, 2 Wolves, 1 Baboon, 1 Macaque, and 1 Man Dead in Ohio*, GQ (Feb. 6, 2012), <https://www.gq.com/story/terry-thompson-ohio-zoo-massacre-chris-heath-gq-february-2012> (describing the incident in detail).

⁸² OHIO REV. CODE ANN. § 935.03(A), (B)(1) (LexisNexis 2013); see also Ampleman & Kysar, *supra* note 34, at 347 (discussing Ohio’s legislation).

⁸³ See COLO. CODE REGS. § 406-11:1104(C)(1)(b)(4) (2018) (“Except as provided herein, wildlife sanctuaries must be an accredited or certified ‘related facility’ by the AZA or accredited or verified by the GFAS prior to and maintain such certification as a condition of the issuance of a wildlife sanctuary license.”).

In this Part, I have demonstrated that the legal framework for wildlife captivity and exhibition does not supply the tools to understand sanctuaries—or other forms of captive care facility—or to develop in adequate detail how we understand the ways facilities may use certain terms or actually treat their animals. Ron Kagan suggests that the current setup leads to an “ironic paradigm,” in which “[t]hose who aim to do good are at times under fire,” while “[t]he credibility of truly good zoos and sanctuaries, those that are genuine and effective champions of individual animals and/or species conservation, is often undermined by bad practices, and indeed exploitation of animals by unaccredited ‘roadside’ zoos and unaccredited ‘pseudo’ sanctuaries.”⁸⁴ What Kagan describes is not irony. It is regulatory failure.

It is also worth emphasizing Kagan’s nod to accreditation. He places trust in the idea that “unaccredited” institutions can do damage and implies that accredited institutions would not present the same deceptions and problems. Kagan does not, however, explore how accreditation systems operate. The above discussion—and the gaps it has revealed—shows how third-party accreditation can have a real impact by sharpening the regulation of captive care. But it also demonstrates the need to develop a system that goes beyond the existing piecemeal collaborations in half a dozen states and that explores the mechanics of how accreditors operate. Taking a step towards a deeper understanding of this important third-party landscape, I turn now to the accreditors themselves.

II

THE PROBLEMATIC INFRASTRUCTURE OF SANCTUARY ACCREDITATION

In this Part, I discuss the actors that give accreditations to wildlife sanctuaries and captive care facilities: the American Sanctuary Association (ASA), the Global Federation of Animal Sanctuaries (GFAS), the Association of Zoos and Aquariums (AZA), the Zoological Association of America (ZAA), and American Humane Conservation (AHC).⁸⁵ Since there are no holistic accounts of how

⁸⁴ Kagan, *supra* note 26, at 133.

⁸⁵ A note on terminology: There are different seals of approval that third parties may bestow on sanctuaries. Accreditation is the “formal expression by a private body of an authoritative opinion concerning the acceptability, under objective quality standards fairly applied, of the services rendered by a particular institutional provider.” Burke, *supra* note 26, at 65 (quoting Clark C. Havinghurst, *Foreword: The Place of Private Accrediting Among the Instruments of Government*, 57 L. & CONTEMP. PROBS. 1, 2 (1994)). Yet organizations may also offer “certifications” or “verifications.” AZA, for example, will “certify” captive care institutions—or “related facilities”—that have “slight differences in mission” from the commercial operators that AZA focuses on. *Accreditation vs.*

the five organizations interact or conflict with one another,⁸⁶ I make a descriptive contribution by discussing three features of the current setup: The accreditors cover only a small number of captive care sites overall, advance distinctive and at times conflicting missions, and adopt notably different standards. Combined, these features result in an accreditation system that both leaves out promising facilities and runs the risk of confusing potential visitors or donors through a patchwork of standards.

A. *Accreditors Cover Only a Small Segment of Captive Care Sites*

Third-party accreditors have grown in number, but they still cover only a small subset of captive care organizations. Of the hundred or so organizations branding themselves as a “sanctuary” or “haven” in the United States, only eight percent have earned an accreditation from the GFAS.⁸⁷ The ASA website proclaims that 2018 marks the group’s twentieth anniversary,⁸⁸ but it has only forty-three sanctuaries on its accreditation roster.⁸⁹ GFAS, as its name suggests, also accredits sanctuaries in foreign countries—and is the only accreditor among the five that has global reach—but there are large swaths of the world left uncovered.⁹⁰ AZA has a certification program

Certification, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/accreditation-vs-certification> (last visited July 14, 2018). Conversely, GFAS, which focuses on non-profit accreditation, describes the difference between its accreditation and verification programs as the former involving an “additional rigorous screening of compliance with GFAS operational standards.” *Accreditation FAQ*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/for-sanctuaries-2/faq/> (last visited July 14, 2018). An organization may earn verification, then, even if it does not comport with GFAS guidelines concerning issues like staffing, education, and finances. *Who Can Apply*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/for-sanctuaries-2/definitions/> (last visited July 14, 2018). Although the terms differ, the general goal remains the same: Accreditations, certifications, and verifications place a stamp of approval on a particular animal care facility. And within the accreditors that use different designations, the terms do not reflect the kind of clear, organized use of tiers that I propose in Part III. Throughout, I will use the terms that the accreditors themselves employ, but as this note makes clear, the terms can be understood as roughly interchangeable.

⁸⁶ See *supra* note 26 (listing sources that conduct side-by-side comparisons of two accreditation bodies, critique a single set of standards, or give brief descriptions of an incomplete group of these bodies).

⁸⁷ Winders, *supra* note 7, at 164.

⁸⁸ AM. SANCTUARY ASS’N, <http://www.asaanimal sanctuaries.org/index.htm> (last visited July 14, 2018).

⁸⁹ *Accredited Sanctuaries by Species*, AM. SANCTUARY ASS’N, http://www.asaanimal sanctuaries.org/accredited_animal_sanctuaries.htm (last visited July 14, 2018).

⁹⁰ See *Find a Sanctuary: Africa*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/find-a-sanctuary/?animal=any®ion=AF&state=any> (last visited July 14, 2018) (showing only six verified or accredited sanctuaries across all of Africa).

for “related facilities,” which runs alongside its accreditation program for zoos, but it has certified only twelve organizations to date.⁹¹

A similarly low number of zoos have earned certification. While AZA has certified over two hundred organizations, this number pales in comparison to the total number of zoos and aquariums in the United States,⁹² not to mention worldwide.⁹³ ZAA, since its founding in 2005, has given its stamp of approval to just under sixty wildlife parks, conservation centers, and zoos.⁹⁴ AHC, which emerged in late 2016, has certified roughly twenty facilities.⁹⁵

Of course, not every institution deserves accreditation. But this scant coverage—hovering below ten percent—of the various zoos, parks, and sanctuaries that operate across the United States and the world, doubtlessly misses a great number of responsible actors across a range of captive care sites. As these groups develop and in the event that still more accreditors emerge, it is important to better understand their varying approaches and standards.

B. Accreditors Are Divided by Ideological Disagreements on Captive Care

The current landscape of accreditors can be partly understood by their different missions and an increasingly powerful undertow of ideological infighting. These rifts becomes apparent through analysis of primary materials such as accreditor websites, mission statements, standard-setting manuals, and applications.

⁹¹ See *Currently Certified Related Facilities*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/current-cert> (last visited July 14, 2018) (listing thirteen sites across the United States, as of April 2018).

⁹² See Rachel Garner, *Who Are the USDA Class C Exhibitors*, WHY ANIMALS DO THE THING (Nov. 2, 2017), <https://www.whyanimalsdothething.com/who-are-the-usda-class-c-exhibitors/> (analyzing and representing graphically the nearly 2500 animal exhibitors). Garner rightly notes, however, that not all exhibitors should be classified as zoos and suggests that, “[w]hile it is a common misconception that all animal exhibitors who hold a Class C license are zoos, it turns out that as of August 2017 zoological facilities comprise less than a fifth (19%) of the 2416 entities with active Class C licenses.” *Id.* Even this figure, however, means that more than two hundred zoos (under Garner’s definition) go without accreditation. And Garner further notes that more than three hundred exhibitors “did not have enough business information online to allow for classification . . .” *Id.*

⁹³ See AM. HUMANE, ARKS OF HOPE: AMBASSADORS FOR ANIMALS 7 (2016) [hereinafter ARKS OF HOPE] (noting that AZA accreditations “only account for 230 out of over 10,000 zoos, aquariums, and animal parks in the world”).

⁹⁴ See *Accredited Facilities*, ZOOLOGICAL ASS’N OF AM., <http://zaa.org/accreditation/accredited-facilities> (last visited July 14, 2018) (listing relevant facilities).

⁹⁵ See *Why Humane Conservation?*, HUMANE CONSERVATION, <http://humaneconservation.org> (last visited July 14, 2018) (listing relevant facilities).

The Association of Zoos & Aquariums (AZA)

The first institution to offer third-party accreditations was AZA, which began its program in 1971.⁹⁶ AZA accredited its first institution in 1974, and by 1985 made the institutional decision to make accreditation mandatory for any organization seeking AZA membership.⁹⁷ As its name suggests, AZA is primarily focused on accrediting zoos and aquariums.⁹⁸ It has branched out, however, in order to develop a certification program for “related facilities” and has certified twelve to date.⁹⁹ These facilities cannot be “open to the public on a regular basis” and “must have conservation as part of their mission.”¹⁰⁰ They can include “wildlife ranches, wildlife refuges or rehab centers, research facilities, survival centers, conservation support facilities, and/or similar organizations.”¹⁰¹

The Zoological Association of America (ZAA) and American Humane Conservation (AHC)

ZAA and AHC both champion causes similar to those of AZA but with an explicit ideological tinge. ZAA was formed in 2005 by combining two other organizations, the United Zoological Association and the International Society of Zooculturists.¹⁰² The founder, Ron Blakely (also a founding member of AZA) wanted a new organization to “deal more personally with ‘animals only’ related issues and concerns” as opposed to getting weighed down by “the distractions of marketing, graphics, gift shops” and the other trappings of modern commercial animal exhibition.¹⁰³ ZAA’s stated mission is thus to “promote[] responsible ownership, management, conserva-

⁹⁶ *About AZA Accreditation*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/what-is-accreditation> (last visited July 14, 2018).

⁹⁷ *Id.*

⁹⁸ *See Currently Accredited Zoos & Aquariums*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/current-accreditation-list> (last visited July 14, 2018) (listing the accredited institutions).

⁹⁹ *See Currently Certified Related Facilities*, ASS’N OF ZOOS & AQUARIUMS, *supra* note 91 (listing thirteen sites across the United States, as of April 2018).

¹⁰⁰ *Accreditation vs. Certification*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/accreditation-vs-certification> (last visited July 14, 2018).

¹⁰¹ *Id.*

¹⁰² *History of ZAA*, ZOOLOGICAL ASS’N OF AM., <http://zaa.org/about-zaa/history-of-zaa> (last visited July 14, 2018).

¹⁰³ *Id.*; *see also* Garner, *supra* note 26 (suggesting that “a big part of why ZAA schism is that AZA “frequently comes across as elitist and condescending towards outsiders”). *But see* Wayne Pacelle, *Top Zoos Can Together Be a Force for Good*, HUMANE SOC’Y OF THE U.S.: A HUMANE NATION (Sept. 11, 2017), <https://blog.humanesociety.org/2017/09/hsus-top-zoos-force-for-good.html> (arguing that ZAA “adopted the nomenclature of the AZA and re-sequenced the words to sow confusion among members of the public”).

tion, and propagation of animals in both privately and publicly funded facilities through professional standards in husbandry, animal care, safety and ethics.”¹⁰⁴ Its board consists largely of professionals from zoos and safari parks.¹⁰⁵ Yet ZAA’s mission also aims to “[e]ducate the media” and to “[d]efend our accredited facilities against false allegations, those with political agendas, and mischaracterizations.”¹⁰⁶ In its very conception, then, ZAA anticipated criticism and opposition, which indeed have come its way.¹⁰⁷

AHC, the most recent program, founded in 2016, is nested within the long-standing institution American Humane, itself founded in 1877. The accreditation committee includes academics with experience in animal health and behavior, as well as two ethicists.¹⁰⁸ The inclusion of industry representatives, however, is controversial.¹⁰⁹

Even more than ZAA, AHC adopts a forceful ideological stance. At first glance, AHC strives to provide “third-party evaluation” of zoos and aquariums.¹¹⁰ From one perspective, the program sees itself as providing transparency that “the public yearns for” in various fields of animal care.¹¹¹ In another sense, the program is simply adding resources to fill the gaps discussed above:¹¹² The publication launching the certification system notes that AZA is only able to certify a small handful of covered organizations.¹¹³ The market for animal exhibition in the U.S. alone is vast and needs additional

¹⁰⁴ *Mission*, ZOOLOGICAL ASS’N OF AM., <http://zaa.org/about-zaa/mission> (last visited July 14, 2018).

¹⁰⁵ *See Board of Directors*, ZOOLOGICAL ASS’N OF AM., <http://zaa.org/about-zaa/board-of-directors> (last visited July 14, 2018) (listing officers including the executive director of the Fort Worth Zoo and CEO of the Pittsburgh Zoo).

¹⁰⁶ *Mission*, ZOOLOGICAL ASS’N OF AM., *supra* note 104.

¹⁰⁷ *See Winders, supra* note 7, at 165–66 (noting ZAA’s mission and discussing several accredited facilities that have violated the AWA); Lilia Komleva, *Wildlife or Commodity?*, GEO. INT’L ENVTL. L. REV. (Sept. 17, 2014), <https://gelr.org/2014/09/17/wildlife-or-commodity/> (“Unfortunately, some of the zoos and breeding facilities . . . are more concerned with profits than with conservation of wildlife. Most of the zoos that are members of the Zoological Association of America . . . are private breeders that ‘pimp out lion and tiger cubs every few months for public contact.’”).

¹⁰⁸ *Scientific Advisory Committee*, HUMANE CONSERVATION, <http://humaneconservation.org/about/committee-members/> (last visited July 14, 2018).

¹⁰⁹ *See Winders, supra* note 7, at 167 (criticizing a setup in which the “board includes representatives from many of the very exhibitors it certifies, as well as Ringling Bros Circus veterinarian and another veterinarian who defended the circus’s use of bullhooks and chains on elephants as a paid witness in court”).

¹¹⁰ ARKS OF HOPE, *supra* note 93, at 7.

¹¹¹ *Id.*

¹¹² *See supra* Section II.A.

¹¹³ *See ARKS OF HOPE, supra* note 93, at 7 (noting that AZA accreditations “only account for 230 out of over 10,000 zoos, aquariums, and animal parks in the world”).

resources on the accreditation side.¹¹⁴ Yet the White Paper launching the AHC program also expresses a concern that the regulatory gaps create space for activists to “paint a misleading picture of zoos and aquariums with a broad and ill-informed brush.”¹¹⁵ Twice, the document singles out PETA for criticism.¹¹⁶ Since PETA is well known as a liberal, even radical, animal advocacy organization,¹¹⁷ these moments reveal a bitter ideological rift in the accreditation space.

The American Sanctuary Association (ASA) and the Global Federation of Animal Sanctuaries (GFAS)

The last two actors in the accreditation space, which come from a different perspective, are ASA and GFAS. ASA, founded in 1998 by actress and activist Tippi Hedren, was a pioneer: the first organization of its kind with a stated commitment to reviewing the “organizational qualifications” and animal care arrangements of non-profit sanctuaries.¹¹⁸ It is not clear, twenty years on, to what extent ASA remains active. Its list of accredited sanctuaries was last updated in 2017,¹¹⁹ yet it has also been reported that the organization “disbanded” after GFAS “went public” in 2009.¹²⁰

¹¹⁴ See *id.* at 10 (“In 2012 nearly 170 million people visited zoos and aquariums in the United States—that’s more attendance than the NFL, NHL and MLB combined. Together, zoos and aquariums contributed almost \$20 billion to the U.S. economy in 2012.”). As a way of conveying the sheer size of different animal care industries in the United States, this sporting comparison is not unique. See Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 ANIMAL L. 163, 170 (2004) (“In sheer financial terms, however, U.S. consumers spent more than \$19 billion on veterinary care in 2001, an amount greater than the attendance receipts of all this country’s professional football, baseball, basketball, and hockey teams, and all college teams, and all movie theatres combined.”).

¹¹⁵ ARKS OF HOPE, *supra* note 93, at 14.

¹¹⁶ See *id.* (referring to PETA’s branding of zoos as “prisons”); see also *id.* at 15 (“While groups such as PETA have an ideological opposition to animals living in any institution . . . this dogma ignores key realities. Most zoo animals are born in zoos. They don’t have the means to live successfully in the wild, but they . . . [can] sustain their species under human care.”).

¹¹⁷ See Michael E. Miller, *PETA Calls for Walter Palmer to Be “Hanged” for Killing Cecil the Lion*, WASH. POST (July 30, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/07/30/peta-calls-for-walter-palmer-to-be-hanged-for-killing-cecil-the-lion/?utm_term=.544397fda35b (noting that “by far and away the most radical reaction” to a notorious trophy hunting incident in Zimbabwe “belonged to [PETA]” and that such a response was not “out of character for the organization, which has earned a reputation as one of the most radical defenders of animal rights”).

¹¹⁸ AM. SANCTUARY ASS’N, <http://www.asaanimalsanctuaries.org/index.htm> (last visited July 14, 2018).

¹¹⁹ *Id.*

¹²⁰ See Garner, *supra* note 26 (discussing the early history and public emergence of GFAS).

In its short history, it is GFAS that has emerged as the “gold standard” for sanctuary accreditation.¹²¹ The group “was founded in 2007 when several leaders in animal protection recognized the difficulty in identifying true sanctuaries among the wide array of animal care facilities around the world.”¹²² Its board is diverse, with a range of medical and veterinary professionals, conservationists, and management professionals who have advised the Humane Society of the United States and led animal rights groups like Born Free USA.¹²³ To the extent there is an ideological undercurrent in GFAS, it lies in a general objection to the use of animals for educational purposes and a highly skeptical outlook on the value of captive breeding programs—stances that are somewhat at odds with AZA and in much sharper conflict with ZAA and AHC.

GFAS operated for two years before accrediting its first sanctuary in 2009, followed by its first international accreditation in 2011.¹²⁴ By 2012, GFAS had accredited 100 animal care facilities.¹²⁵ In addition to its accreditation work, the organization has partnered with international foundations to host “sanctuary workshop[s],” developed webinars and other online courses to assist sanctuaries in meeting GFAS standards,¹²⁶ and given an annual award for “sanctuary excellence.”¹²⁷

To be clear, AHC’s overt distaste for PETA should not be assumed to extend to GFAS. Indeed, some have praised GFAS for moving away from the potentially polarizing ideological stances of its founders and developing into a more technocratic organization.¹²⁸ Nevertheless, it is still apparent that the five organizations operating in the third-party accreditation sphere have different inclinations and priorities. The rise of AHC in particular may ignite more ideologically charged competition over what seals of approval could—or should—

¹²¹ Kagan, *supra* note 26, at 135.

¹²² *History*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/about-gfas-2/timeline/> (last visited July 14, 2018) (emphasis in original removed).

¹²³ *Board and Staff*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/about-gfas-2/board-and-staff> (last visited July 14, 2018).

¹²⁴ See *History*, GLOB. FED’N OF ANIMAL SANCTUARIES, *supra* note 122 (giving a timeline of accomplishments).

¹²⁵ *Id.*

¹²⁶ *Resources*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/information-tools-resources/> (last visited July 14, 2018).

¹²⁷ *Carole Noon Award for Sanctuary Excellence*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/about-gfas-2/carole-noon-award/> (last visited July 14, 2018).

¹²⁸ See Garner, *supra* note 26 (“[U]pon examination of both the GFAS standards and their accredited facilities, it does seem that they’ve managed to break from the radical viewpoints of their founders and have established a high quality and reasonable set of requirements and standards for the facilities they oversee.”).

promote. Since these missions and standards reflect profound ideological rifts in animal law,¹²⁹ they are not likely to be resolved. This deadlock makes it important to invest scholarly energy in better understanding the mechanics of the different accreditation bodies and how they could develop and streamline into a more coherent system that better accounts for their range of viewpoints and communicates them to the public.

C. *Accreditors Adopt Varying Standards to Evaluate Animal Care Facilities*

This Section completes the descriptive contribution. I evaluate—accreditor by accreditor—their different procedures and standards to reveal important differences both at a ministerial level and in terms of the substantive guidelines for animal welfare.

ASA Accreditation

An ASA application asks for details such as articles of incorporation, numbers of employees and volunteers, veterinary care, and licensing and permitting.¹³⁰ Further, ASA inquires about educational and promotional activities, breeding, and whether the organization considers itself “primarily” to be a “wildlife rehabilitation and release service[],” an adoption or advocacy group, or “open to the public.”¹³¹ Additional (unspecified) information would be required for an institution that welcomes visitors.¹³²

The ASA guidance on sanctuary criteria is limited. The necessary characteristics include: “no breeding;” “no use of animals for any commercial activity that is exploitative in nature,” such as “allowing free roaming public access to the animals or the sanctuary;” emergency plans; and “proper veterinary care.”¹³³ However, ASA has

¹²⁹ Compare Michael Hutchins, Brandie Smith & Ruth Allard, *In Defense of Zoos and Aquariums: The Ethical Basis for Keeping Wild Animals in Captivity*, 223 J. AM. VETERINARY MED. ASS'N 958, 959–62 (2003) (giving “ethical justification[s]” for zoos and aquariums), with TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (2004) (arguing that animals have inherent value and should not be put to any human uses such as entertainment or agriculture), and Nigel Rothfels, *Foreword* to *INCREASING LEGAL RIGHTS FOR ZOO ANIMALS* x (Jesse Donahue ed., 2017) (“[T]he sanctuary movement (with its own accrediting bodies) has arisen to offer yet another elusory claim that there is some way of keeping animals in captivity that is better than . . . keeping animals in captivity.”).

¹³⁰ *Sanctuary Accreditation Application*, AM. SANCTUARY ASS'N, http://www.asaanimalsanctuaries.org/pdfs/2016/Application_2016.pdf (last visited July 14, 2018).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Sanctuary Criteria*, AM. SANCTUARY ASS'N, http://www.asaanimalsanctuaries.org/sanctuary_criteria.htm (last visited Sept. 21, 2018).

three large exceptions. First, a sanctuary may engage in breeding “for the right reasons” and if there exists a “viable plan for wild release.”¹³⁴ Second, some animals may be a “valuable asset” such that “free roaming public access to resident animals” would in fact be allowed.¹³⁵ Third, ASA may make an exception for “guided educational presentations to schools and the general public, emphasizing the injustices of keeping wild animals as ‘pets.’”¹³⁶ The ASA criteria thus actually permit a range of exhibition and conservation practices, its broad exceptions potentially swallowing its underlying rules.

GFAS Accreditation

The GFAS accreditation process is far more rigorous. Apart from submitting time-consuming paperwork that includes GFAS forms and relevant licenses, a facility may have to implement certain structural changes. For example, it may need to switch to a leasing arrangement if the sanctuary is on the founder’s private land, thus creating a more reliable mechanism for long-term animal housing.¹³⁷ GFAS relies on volunteers or staff members to make site visits and conduct interviews.¹³⁸ GFAS accreditations and validations are then valid for three years.¹³⁹ GFAS levies an annual fee, assessed on a “sliding scale,” and requires a sanctuary to disclose “major changes” such as relocation.¹⁴⁰ After three years, the renewal process is similarly extensive.¹⁴¹

GFAS substantive guidelines for sanctuaries follow a common structure. They lay out standards that cover the animal’s experiences in the sanctuary (housing, nutrition, veterinary care, handling), internal administrative issues (staffing, safety protocols), external relations (education and public contact with the animals), and the acquisition and disposition of animals.¹⁴² In contrast with ASA, the GFAS standards are painstakingly detailed. The group has penned sixty-seven pages on bats,¹⁴³ seventy-four pages on great apes,¹⁴⁴ and simi-

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See *Accreditation FAQ*, GLOB. FED’N OF ANIMAL SANCTUARIES, *supra* note 85 (noting this condition and others such as replacing any “unsafe fencing”).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*; see also Garner, *supra* note 26 (summarizing GFAS’s mission and “standards of excellence”).

¹⁴² *Standards of Excellence*, GLOB. FED’N OF ANIMAL SANCTUARIES, <https://www.sanctuaryfederation.org/accreditation/standards/> (last visited Sept. 3, 2018).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

larly meticulous documents for equine animals, elephants, and birds.¹⁴⁵

AZA Certification

Earning AZA certification is also a demanding process.¹⁴⁶ Applying for certification requires paperwork that includes a thirty-page questionnaire and an “on-site inspection.”¹⁴⁷ The inspectors have expertise in “[o]perations, [a]nimal [m]anagement, or [v]eterinary [m]edicine,” five years of relevant professional experience, and an employment record with an accredited institution.¹⁴⁸ AZA then lists the concerns that the applicant needs to address in order to achieve compliance with AZA standards, after which the sixteen-member Accreditation Commission conducts a hearing and makes a determination to “grant, table, or deny certification.”¹⁴⁹ The applications are fee based, which may be more costly than the GFAS sliding scale.¹⁵⁰ Once awarded, AZA certification lasts for five years,¹⁵¹ two years longer than that offered by GFAS.¹⁵²

AZA substantive standards for animal welfare cover living conditions as well as “psychological . . . well-being,” veterinary services, and security.¹⁵³ Additionally, in keeping with the larger mission of AZA—and departing in this respect from GFAS—the facility *must* have a written plan for “conservation and education.”¹⁵⁴ Although AZA places a premium on education, the enforceability of its guidelines is unclear.¹⁵⁵ For “[f]acilities that occasionally host a small number of

¹⁴⁵ See *id.* (compiling the various species-specific guidelines).

¹⁴⁶ See Kagan, *supra* note 26 (praising AZA standards).

¹⁴⁷ ASS’N OF ZOOS & AQUARIUMS, THE GUIDE TO CERTIFICATION OF RELATED FACILITIES 21 (2018), https://www.speakcdn.com/assets/2332/guide_to_certification.pdf [hereinafter AZA GUIDE TO CERTIFICATION].

¹⁴⁸ *Id.* at 32.

¹⁴⁹ *Id.* at 17.

¹⁵⁰ See *id.* at 19 (noting the required \$1200 nonrefundable “[f]iling [f]ee” as well as payment of “[v]isiting [c]ommittee” expenses); see also Burke, *supra* note 26, at 64–65 (arguing that a percentage-based scheme is “more accessible” and “less expensive” than one based on filing fees); Garner, *supra* note 26 (calling AZA accreditation “a long and often expensive process” with fees up to \$15,000).

¹⁵¹ See AZA GUIDE TO CERTIFICATION, *supra* note 147, at 11 (“[C]ertification is required every five years.”).

¹⁵² See *Accreditation FAQ*, GLOB. FED’N OF ANIMAL SANCTUARIES, *supra* note 85 (“Each [a]ccreditation . . . is in effect for a period of three years.”).

¹⁵³ See AZA GUIDE TO CERTIFICATION, *supra* note 147, at 35–40 (describing these and other “areas of primary focus” for site inspection and certification).

¹⁵⁴ See *id.* at 34 (“The scope of the facility’s conservation and education programs will be closely reviewed. Both of these programs require a written plan.”).

¹⁵⁵ In the accreditation space, at least, the AZA processes have not been spotless. See Marla K. Conley, *Caring for Dolphins, Otters, and Octopuses: Speciesism in the Regulation*

visitors by appointment,”¹⁵⁶ no program is required. A site with “a regular flow of public visitors and/or school groups,” on the other hand, “*should* strive to have an education program.”¹⁵⁷ For facilities uncertain of their eligibility, AZA also offers a “mentoring program” to assess the facility between one and five years prior to application and guide it towards certification standards.¹⁵⁸

ZAA Accreditation

Moving from GFAS and AZA to ZAA, the procedures and standards appear to slip. Procedurally, ZAA looks similar to AZA. An applicant must have an “educational and conservation message,” or an educational program that “us[es]” the animals or breeds them for conservation.¹⁵⁹ The accreditation process costs at least \$800 and requires an application that asks about operational details, past injuries, veterinary care, and diet.¹⁶⁰ The application also covers factors including security, licensing, safety, and animal care.¹⁶¹

Substantively, though, the ZAA approach differs from AZA and GFAS in that it groups wildlife into “classes” and then describes requirements within these larger categories. Two classes consist of diverse, enumerated lists. Class I, for example, includes gorillas, elephants, Komodo dragons, and cetaceans.¹⁶² Class II animals range from howler monkeys to dwarf crocodiles.¹⁶³ Class III is a catch-all for “[a]ll other wildlife not listed herein.”¹⁶⁴ Specific requirements, which ZAA lays out in some detail (though not as extensively as either AZA or GFAS), covers general facility characteristics such as acreage and

of Zoos and Aquariums, 15 ANIMAL L. 237, 248–49 (2009) (“At least fourteen zoos with accreditation from the AZA have closed or plan to close their elephant exhibits.”).

¹⁵⁶ AZA GUIDE TO CERTIFICATION, *supra* note 147, at 38.

¹⁵⁷ *Id.* (emphasis added).

¹⁵⁸ *Id.* at 45.

¹⁵⁹ *Accreditation*, ZOOLOGICAL ASS’N OF AM., <http://zaa.org/accreditation> (last visited July 14, 2018). ZAA has been criticized for this aspect of its accreditation scheme. See Komleva, *supra* note 107, at 1 (“Unfortunately, some of the zoos and breeding facilities . . . are more concerned with profits than with conservation of wildlife. Most of the zoos that are members of the Zoological Association of America . . . are private breeders that ‘pimp out lion and tiger cubs every few months for public contact.’”).

¹⁶⁰ ZOOLOGICAL ASS’N OF AM., ZOOLOGICAL ASSOCIATION OF AMERICA APPLICATION FOR ACCREDITATION (2018), <http://zaa.org/images/pages/forms/ZAA%20Accreditation%20Application.pdf>.

¹⁶¹ See *id.* (posing specific questions about these factors and providing room for answers, explanations, and copies of relevant documentation).

¹⁶² ZOOLOGICAL ASS’N OF AM., ANIMAL CARE & ENCLOSURE STANDARDS AND RELATED POLICIES 4 (2016), http://www.zaa.org/images/pages/misc/ZAA_Accreditation_Standards.pdf.

¹⁶³ *Id.* at 5.

¹⁶⁴ *Id.* at 6.

fencing as well as guidance for “[p]ublic contact.”¹⁶⁵ There is also limited guidance at a more granular level for different types of primate,¹⁶⁶ hoof stock,¹⁶⁷ and birds.¹⁶⁸ Unlike AZA and GFAS, ZAA embraces the risky work of animal mobility: It lays out requirements for how to transport and cage “[p]erforming [a]nimals” and animals that would be part of a “mobile exhibit.”¹⁶⁹

AHC Certification

Lastly, AHC lags behind the other four accreditors in terms of both adopting and publicizing detailed processes and guidelines. The certification process consists of a “[p]re-[a]udit” application and an “[o]n-[s]ite [a]udit.”¹⁷⁰ The former covers information concerning the animals and their “care teams” and environments, while the latter focuses on individual animal welfare and relies on both “direct observation” and “indirect indicators.”¹⁷¹ The standards for direct observation are imprecise and unassertive: “[g]ood health, [g]ood housing, [g]ood feeding, [g]ood management.”¹⁷² Similarly, the indirect indicators encompass “safety measures,” “nutritional needs,” and “appropriate sound levels.”¹⁷³ Finally, there is a “[m]andatory [p]ass [c]hecklist” that sets out three red lines: “[n]o [a]nimal [a]buse;” an “appropriate veterinary/health plan;” and staff awareness of how to “promote[] animal welfare.”¹⁷⁴ Species-specific criteria, though ostensibly part of the on-site audit, are not apparent from the available public documents cited here.

In sum, the current accreditation landscape covers too little ground and is occupied by five groups, divergent in their missions, policies, and standards for accreditation. None of this is to suggest that accreditation bodies should disband. Rather, armed with a wide-angle understanding of how GFAS, ZAA, and others interrelate, we can

¹⁶⁵ *Id.* at 7–8.

¹⁶⁶ *See id.* at 15–17 (requiring a minimum square footage, perching areas, and nest boxes for enclosures).

¹⁶⁷ *See id.* at 22–23 (requiring a minimum square footage for enclosures and for fence heights).

¹⁶⁸ *See id.* at 30–32 (requiring minimum square footage and setting maximum capacity for enclosures).

¹⁶⁹ *Id.* at 41.

¹⁷⁰ AM. HUMANE, HUMANE CONSERVATION PROGRAM 1 (2017), <http://humaneconservation.org/app/uploads/2016/05/Certification-Standards-Details-Humane-Conservation.pdf> [hereinafter AM. HUMANE CONSERVATION PROGRAM].

¹⁷¹ *Id.* at 2–3.

¹⁷² *Id.* at 3 (emphasis added). *But see* Winders, *supra* note 7, at 167 (criticizing the criteria as “vague, cursory, and vacuous”).

¹⁷³ AM. HUMANE CONSERVATION PROGRAM, *supra* note 170, at 3.

¹⁷⁴ *Id.* at 4–5.

begin to explore the possibilities for forming a more reliable extra-governmental regulatory mechanism.

III SOLUTIONS FOR IMPROVING THIRD-PARTY ACCREDITATION

In Parts I and II, I identified the legal ambiguities that surround captive care and wildlife sanctuaries and analyzed the five organizations that, in recent decades, have emerged as third-party accreditors. In Part III, I look to the future and consider potential solutions for improving the current accreditation regime. Given the dearth of academic literature on the accreditors, I draw on scholarship from the food labeling and global tourism industries. I argue that the best path forward is incremental and centers on how to clarify and further develop the information available to visitors, donors, and consumers both *from* and *about* the accreditation bodies.

More specifically, I argue for a tiered system as well as more detailed stamps of approval that better match the accreditation to its definition or label. Any such changes would only be effective, though, by harnessing the platforms through which people find zoos or sanctuaries in the first place. As a corollary, then, I suggest the incorporation of accreditation details in online advertising and review platforms, thus linking visitors and donors with the third-party regulatory system. This synthesis could enhance public understanding of different facilities and avoid misdirection of support and resources. After laying out this proposal, I consider a range of other possible solutions.

A. *Tiers, Details & Dissemination: First Steps to an Improved Accreditation System*

Currently, none of the third-party accreditors use tiers in their schemes; an institution is either accredited or not. In the context of zoos and wildlife sanctuaries, the development of such gradations would be an important step forward. Individually, the accreditors could establish whether their verified institutions exhibit, for example, a “moderate” or “high” level of compliance with their standards.¹⁷⁵ Alternatively, they could institute a points-based ranking system akin to the silver, gold, and platinum designations that the U.S. Green

¹⁷⁵ For a theoretical law and economics perspective on this type of tiered system, referring to it as the “integration [by] degree” of an accreditation system, see Sean P. Sullivan, *Empowering Market Regulation of Agricultural Animal Welfare Through Product Labeling*, 19 ANIMAL L. 391, 419 (2013).

Building Council uses to evaluate the environmental sustainability and energy efficiency of buildings.¹⁷⁶

Within each accreditor, this extra granularity could serve a useful incentivizing function. Groups with a lower accreditation might be more invested in improving their conditions and pursuing a higher rating.¹⁷⁷ This is particularly valuable for facilities whose ability to meet high standards may lie on the margins. If situated on a lower tier, such facilities could gain additional accreditation-related benefits by improving in their operations and conditions, an added incentive to make such positive changes.

Additionally, a ranked and tiered structure could allow for greater coverage, alleviating one of the problematic features of the current system.¹⁷⁸ To the extent that GFAS, for example, is considered the “gold standard,”¹⁷⁹ there is no obvious silver or bronze. By establishing different tiers, an accreditor like GFAS would be able to bring more facilities into its fold. Over time, an increased ratio of accredited facilities would normalize the use of third-party certification and allow a roster of accredited facilities to more accurately represent the range and quality of captive care facilities.

The second aspect of my proposal focuses on sharpening terminology. Accreditors could add detail such that a particular institute may be a “GFAS-accredited *sanctuary*” or an “AZA-certified *rescue center*.”¹⁸⁰ Adding such particularity to the accreditation stamp could help synchronize the branding and marketing efforts of a particular care facility with the more objective, bounded criteria that the

¹⁷⁶ See *LEED is Green Building*, U.S. GREEN BLDG. COUNCIL, <https://new.usgbc.org/leed> (last visited July 14, 2018) (describing a tiered, points-based system).

¹⁷⁷ Giving an example of this logic from the environmental sector, energy efficiency advocates have argued that while “[s]ome scores will not be flattering,” they are useful for “identifying buildings with the most opportunity to improve” and that this dynamic “is a big part of driving energy savings” because it “put[s] energy on the radar of real estate consumers.” Mireya Navarro, *City’s Law Tracking Energy Use Yields Some Surprises*, N.Y. TIMES (Dec. 24, 2012), <https://www.nytimes.com/2012/12/25/science/earth/new-york-citys-effort-to-track-energy-efficiency-yields-some-surprises.html>.

¹⁷⁸ See *supra* Section II.A.

¹⁷⁹ See *supra* note 121 and accompanying text.

¹⁸⁰ Theorists would consider this feature a form of “integration [by] scope,” which refers not to abstract tiers or gradients, but instead accounts for the kinds of criteria that a certification program explores. In the food industry, for example, some labels weigh “use of chemicals and pesticides” in their assessment of the quality of animal products, while others do not. See Sullivan, *supra* note 175, at 419–20. There may be some divergence here among accreditors, but it is more likely to occur through substantive standards rather than the particular labels used, on which there is tentative agreement. See *supra* notes 37–39 and accompanying text. This is in contrast with formal legal and regulatory systems, which have failed to define terms such as “sanctuary” or “zoo” or “rescue” with any specificity. See Section I.B (discussing formal shortfalls in both developing these terms and regulating the relevant facilities).

accreditors themselves employ. If a facility marketing itself as a “sanctuary” could only attain accreditation as a “zoo,” because of its educational policies, or as a “rescue center” because it houses animals temporarily rather than permanently, it may opt to dodge consumer confusion by matching its name and marketing to the accreditation. In this way, accreditation could serve a kind of unifying or information-forcing function.

In generating this information and synchronization, more detailed accreditations would yield two benefits. First, they would respond directly to the informational incongruities embodied by Summer Wind Farms Sanctuary or Tiger Rescue,¹⁸¹ pushing towards the terminological consistency and stability that the formal legal regime has not attained. Evidence from the food industry, based on a survey conducted by the European Commission, suggests that such “transparency that allows interested consumers to find out differences between competing standards” is valuable.¹⁸²

Second, this extra level of detail could be a way to accommodate the ideological divisions among accreditors. One of the challenges for any wholly integrated captive care accreditation scheme would be the inability of accreditors to agree on the right purposes and philosophies of captive care.¹⁸³ This is in contrast to the food industry, for example, where egg producers may disagree on the appropriate conditions for their hens but do not dispute the general character of their shared agricultural, egg-producing businesses.¹⁸⁴ Some overlap among accreditors may remain,¹⁸⁵ but a more detailed set of seals could better crystallize the types of facilities on which they focus most of their attention and their favored ideologies concerning exhibition, education, or conservation.

As for the actual dissemination of all of this information, the literature on global tourism has provided a helpful starting point:

¹⁸¹ See *supra* notes 1–8 and accompanying text.

¹⁸² Sullivan, *supra* note 175, at 420 n.152 (quoting European Comm’n, *Feasibility Study on Animal Welfare Labelling and Establishing a Community Reference Centre for Animal Protection and Welfare: Part I* 23 (Jan. 26, 2009), https://ec.europa.eu/food/sites/food/files/animals/docs/aw_other_aspects_labelling_feasibility_study_report_part1.pdf).

¹⁸³ See *supra* notes 34, 129 and accompanying text.

¹⁸⁴ Theoretically, this egg-labeling model represents a “harmoniz[ed]” program that comes together “around a single, dominant certification program” such as one run by a government agency. See Sullivan, *supra* note 175, at 417. Harmonization would have the benefits of simplicity and standardization, but it is difficult to achieve without unified purposes across the relevant actors. See *id.* at 417–18 (suggesting that programs run by central governments, including those that “set[] labeling and certification standards,” are the best at harmonization and that “a single private-sector animal-welfare certification program” could also achieve harmonization).

¹⁸⁵ See, e.g., Garner, *supra* note 26 (noting facilities certified by both ZAA and AZA).

[R]emoving tourists' barriers to ethical consumption will require providing prominently placed information that emphasi[z]es the ethical dimension of their attendance of [wildlife tourism associations], and which provides them with the knowledge required to make choices that align with their values. To reach a sufficiently wide audience such information would need to be hosted in fora that are already used by tourists to make decisions about which attractions . . . to visit. Increasingly this will mean working with online review sites.¹⁸⁶

Moorhouse goes on to suggest that the online platforms like TripAdvisor or Yelp should *themselves* generate scores and metrics.¹⁸⁷ This path, however, would further dilute the clarity of the accreditation landscape. Rather, online platforms could clearly advertise and lay out (or link to) rough terminological distinctions (sanctuaries as permanent homes, for example; zoos as educational institutions) and some of the substantive metrics that accreditation bodies use, such as size of enclosure, regularity of inspections, availability of veterinary care, or extent of human-animal contact. This diffusion of information, as opposed to the advent of yet another set of third-party standards, could better align visitor perceptions with the criteria that accreditors actually employ when making their assessments. For the newcomer to third-party accreditation, this collaboration would better link accreditors to the resources that people use to find wildlife centers they may visit or support in other ways.

There are of course caveats and limitations to my proposal. First, accreditation is a voluntary mechanism: Captive care institutions seek out (and pay for) the third-party imprimatur. Second, launching a tiered and more detailed system would only have wide impact if the audience—from the potential visitor to the activist trying to relocate injured animals from a shut-down circus—both *demand*s and *understands* the gradients and factors that comprise an accreditation.

Tackling these limitations rests on embracing bottom-up, incremental change. An empirical study about consumer understanding of terms like “sanctuary” or “zoo” would be a valuable addition to the literature, but even in its absence there is anecdotal evidence and expert opinion both about consumer confusion and public desire for informative seals of approval.¹⁸⁸ Furthermore, the food labeling schol-

¹⁸⁶ Moorhouse, D'Cruze & Macdonald, *supra* note 20, at 512.

¹⁸⁷ See *id.* at 513 (exploring the option of a “TripAdvisor Green Credential” to allow tourists to see “an unequivocal assessment of welfare and conservation impacts” and then work towards a “subjective norm” of “limit[ing] the wider impacts of their consumption with respect to the welfare and conservation of animals”).

¹⁸⁸ See Monica Anderson, *Amid Debate over Labeling GM Foods, Most Americans Believe They're Unsafe*, PEW RES. CTR. (Aug. 11, 2015), <http://www.pewresearch.org/fact->

arship has shown that additional precision and streamlining can help consumers, whereas a failure to regulate welfare claims on certain products “creates a risk that consumers are buying products that they otherwise would not buy.”¹⁸⁹ My proposal thus relies in part on the ability and willingness of potential visitors and supporters of sites of captive care to play their part in driving a movement towards clearer and better-structured frameworks of third-party accreditation. But there is promising evidence of such a groundswell in the food industry, and there is no doubt that consumers can be a very powerful, bottom-up force on questions pertaining to animal welfare.¹⁹⁰ Lastly, as I show in the next Section, there is real value in incremental change, in contrast to more sweeping alternative solutions.

B. In Defense of Incremental Change: A Critique of Competing Solutions

It may be objected that the proposal I have made—advancing tiered, more detailed accreditations that could ameliorate informational harms, coupled with a way to communicate these standards to the public—is not far-reaching enough. Since the debate about improving accreditation is just beginning, I now consider several alternative options and, in analyzing their flaws, defend the role of bottom-up, incremental reform.

David Cassuto and Cayleigh Eckhardt recently made the case for the most ambitious solution: the creation of an Animal Welfare Agency.¹⁹¹ Although the emphasis would be on “agricultural ani-

tank/2015/08/11/amid-debate-over-labeling-gm-foods-most-americans-believe-theyre-unsafe/ (“[A] majority of Americans support labeling genetically modified foods, and half check for GM food labels while shopping.”); Pacelle, *supra* note 103 (expressing frustration about how ZAA in particular “sow[s] confusion among members of the public”); cf. Samuel R. Wiseman, *Localism, Labels, and Animal Welfare*, 13 NW. J. L. & SOC. POL’Y 66, 79–80 (2018) (discussing the problem of how consumers use “localism”—claims about the local sourcing of ingredients and products—as a proxy for animal welfare).

¹⁸⁹ Sheila Rodriguez, *The Morally Informed Consumer: Examining Animal Welfare Claims on Egg Labels*, 30 TEMP. J. SCI. TECH. & ENVTL. L. 51, 52–53 (2011) (making this argument in the context of egg labeling); see also David N. Cassuto & Cayleigh Eckhardt, *Don’t Be Cruel (Anymore): A Look at the Animal Cruelty Regimes of the United States and Brazil with a Call for a New Animal Welfare Agency*, 43 B.C. ENVTL. AFF. L. REV. 1, 32 (2016) (noting, in the context of the meat industry, that “consumer backlash sometimes leads to reforms”).

¹⁹⁰ See Moorhouse, D’Cruze & Macdonald, *supra* note 20, at 508 (“In the absence of effective regulation, tourist revenue becomes the ultimate arbiter of what constitutes acceptable use of animals in attractions – and so animal welfare standards effectively become subject to market forces.”).

¹⁹¹ See Cassuto & Eckhardt, *supra* note 189, at 4 (“There must be a new regulatory body devoted to the conditions of animals. Specifically, we call for the creation of a federal agency—The Animal Welfare Agency (‘AWA’)—to regulate animal safety and welfare.”).

mals,” the agency “would have jurisdiction over all animal welfare.”¹⁹² The major benefits of such an agency would be the “end [of] the consistent privileging of economics over animal welfare” and the “impartiality and focused implementation” of an independent agency.¹⁹³ Such an agency could establish its own accreditation system, thus “harmonizing” the existing actors.¹⁹⁴

This solution faces obstacles that may be insurmountable. A new agency would require the passage of an organic statute that in this instance is also a “reorganization statute,” shifting to a new body some current work of the USDA.¹⁹⁵ The agency would attract vociferous objections from the “enormous power and influence” of the “agricultural lobby,”¹⁹⁶ which spends around \$130 million a year.¹⁹⁷ Cassuto and Eckhardt also envision a very specific structure in order to achieve the right level of political insulation.¹⁹⁸ Not to mention that new agencies are costly and time-consuming to build, whereas incremental, bottom-up change can take hold and directly impact consumers more quickly.¹⁹⁹

¹⁹² *Id.* at 4.

¹⁹³ *Id.* at 34.

¹⁹⁴ See Sullivan, *supra* note 175, at 417 (elaborating on the content of this term). It is worth noting here that harmonization, while unlikely at the federal level, could be fertile ground for state or regional action. There would not be the same uniformity as could be achieved by a harmonized national system, but a compact between state regulators and third parties could yield useful insights about the viability of a more harmonized scheme, such as exists nationally for the labeling of egg cartons as “organic” or from “pasture-raised” hens. See Gyorgy Scrinis, Christine Parker & Rachel Carey, *The Caged Chicken or the Free-Range Egg? The Regulatory and Market Dynamics of Layer-Hen Welfare in the UK, Australia and the USA*, 30 J. AGRIC. & ENVTL. ETHICS 783, 797–99 (2017) (discussing the different actors in the United States within this sector).

¹⁹⁵ See Cassuto & Eckhardt, *supra* note 189, at 37 (“[A]ll existing statutory authority for animal welfare must be re-delegated from existing agencies to the AWA. . . . mainly from the Department of Agriculture.”).

¹⁹⁶ See *id.* at 27–30 (discussing the influence of agribusiness interests on the political and regulatory process over the past several decades).

¹⁹⁷ See *Agribusiness*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/lobby/indus.php?id=A&year=2017> (last visited July 14, 2018) (tabulating lobbying expenses in the agricultural sector).

¹⁹⁸ See Cassuto & Eckhardt, *supra* note 189, at 35–36 (proposing a multi-member commission, with term limits as well as a cap on the number of commissioners from the same political party as the sitting president).

¹⁹⁹ See, e.g., AJ Vicens, *After Embarrassing Hacks, Feds Roll Out New Government Agency*, MOTHER JONES (Jan. 26, 2016), <https://www.motherjones.com/politics/2016/01/new-government-agency-takeover-backgrounding/> (noting that President Obama requested nearly \$100 million in funding to set up an agency to run government employee background checks); *Creation of the Department of Homeland Security*, U.S. DEP’T OF HOMELAND SECURITY, <https://www.dhs.gov/creation-department-homeland-security> (last visited July 16, 2018) (giving a timeline of over eighteen months to establish this new executive agency).

A second solution would be to allow for direct, false advertising complaints, either through the Federal Trade Commission (FTC) or the court system. Agency filing is an affordable and available tool for all citizens,²⁰⁰ but at both federal and state levels the complainant is at the mercy of agency discretion. The FTC receives millions of complaints annually,²⁰¹ with the result that questions about sanctuary branding may take a back seat.²⁰² At the state level, resource constraints may result in agencies being “less reactive to the more ethereal cases involving animal advocacy.”²⁰³ And a recent D.C. Circuit case concerning captive care demonstrates the difficulty of challenging certain agency actions in court.²⁰⁴

Granted, there has been some success on the litigation front in the food industry. For example, the Animal Legal Defense Fund sued egg producers in 2014 for their false claims about “free-range” eggs, leading to a settlement.²⁰⁵ In 2013, a class of consumer plaintiffs survived a motion to dismiss when alleging that the “Humanely Raised” label on a brand of Perdue Farms chicken falsely suggested the maintenance of humane conditions throughout a chicken’s life.²⁰⁶ In an analysis of the Lanham Act, Carter Dillard, Senior Policy Advisor for the Animal Legal Defense Fund, argues that false advertising represents a “rare, albeit roundabout legal opening for animal advocates.”²⁰⁷ With respect to this Note, a critical limitation is that these efforts may target the entity actually advertising more than the third-party accreditor. Litigation efforts should of course continue in which

²⁰⁰ See Carter Dillard, *False Advertising, Animals, and Ethical Consumption*, 10 ANIMAL L. 25, 42 (2004) (“[A]nyone can file with the appropriate state or federal agency, [and] the filing will cost very little.”).

²⁰¹ See Press Release, Fed. Trade Comm’n, FTC Releases Annual Summary of Consumer Complaints (Mar. 3, 2017), <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-releases-annual-summary-consumer-complaints> (tabulating top ten categories of over three million complaints).

²⁰² See Dillard, *supra* note 200, at 32 (“Animal advocacy groups must show that, despite competing consumer complaints of retirees deprived of their life savings and baby formulas completely devoid of nutrition, the ‘humane foie-gras’ or ‘animal-friendly glue traps’ must be stopped.”).

²⁰³ *Id.* at 34.

²⁰⁴ See *Animal Legal Def. Fund v. Perdue*, 872 F.3d 602, 616–18 (D.C. Cir. 2017) (giving the USDA broad deference when interpreting and implementing its mandate to “issue” exhibitor licenses).

²⁰⁵ Press Release, Animal Legal Def. Fund, ALDF Announces Settlement of False Advertising Lawsuit Against Bay Area Egg Producer (Feb. 5, 2014), <http://aldf.org/press-room/press-releases/aldf-announces-settlement-of-false-advertising-lawsuit-against-bay-area-egg-producer/>; see also Scrinis, Parker & Carey, *supra* note 194, at 801 (discussing the litigation).

²⁰⁶ See *Hemy v. Perdue Farms, Inc.*, No. 11-888(MAS) (LHG), 2013 WL 1338199, at *10 (D.N.J. Mar. 31, 2013).

²⁰⁷ Dillard, *supra* note 200, at 62.

advocates see viable claims for false advertising, have standing to sue, and can cover the often-high costs of pursuing action in a judicial forum.²⁰⁸ However, these efforts and the proposal I have put forward are not mutually exclusive. It also must be noted that their successes may only indirectly impact accreditors.

A third path to pursue would be further expansion of the accreditor role within state regulatory structures. As previously discussed, a few states including Maryland, Colorado, and Ohio involve accreditors in their regulatory schemes.²⁰⁹ This option, though, does not provide clear incentives to change how the groups operate. Rather, the states take a deferential approach to whichever accreditor they have selected, most often by granting wholesale exemptions to their accredited institutions. The risks of this solution cut both ways. On the one hand, animal rights advocates would bristle at the thought that ZAA, an organization they have criticized,²¹⁰ has been incorporated into a formal regulatory system. On the other hand, even if the involvement of GFAS would help to build well above the floor of the Animal Welfare Act, it may be worth resisting this “slip[] into a regulatory mode” that formalizes one organization as a standard-bearer.²¹¹ In an area with vigorous debate around values such as education and conservation, there would be a risk that “particularized reliance deprives both license applicants and those they serve of alternative information and opinions.”²¹²

In sum, a number of compelling options that may emerge in this nascent conversation—designing a new agency, filing false advertising complaints, or bringing accreditors into the formal regulatory fold—suffer significant flaws. And they do not specifically target the underlying informational gaps that allow captive care institutions to adopt and benefit from a particular moniker. My proposal may seem a small step, but incrementalism and bottom-up approaches can be influential in this policy arena. Indeed, if a few square feet can make a meaningful difference to caging requirements,²¹³ clearer terms and seals of approval may achieve something as well.

²⁰⁸ See Dillard, *supra* note 200, at 45 (describing suits as “costly, time consuming, and . . . not available to all interested parties”).

²⁰⁹ See *supra* notes 80–83 and accompanying text.

²¹⁰ See *supra* note 107.

²¹¹ Burke, *supra* note 26, at 65.

²¹² *Id.*

²¹³ See *California Mandates More Space in the Cage for Egg-Laying Hens*, 64 AM. WELFARE INST. Q. 18, 18–19 (2015), <https://awionline.org/sites/default/files/articles/15SpringQ-FinalWeb.pdf> (recounting ballot propositions in California to give hen-laying eggs “space to perform a few basic natural behaviors” and new requirements in Michigan, Oregon, and Washington to enlarge cage sizes).

CONCLUSION

Many of us “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.”²¹⁴ We search for a zoo, aquarium, or sanctuary in the hopes that it will provide this ethical place. But as Delcianna Winders poignantly adds, “It doesn’t occur to us, at least not right away, that perhaps there is no such place.”²¹⁵ Sanctuary operators might even “be the first to express a desire that sanctuaries go out of business” and that humans leave wild animals be.²¹⁶

This viewpoint is admirably pure. It distances humans from interactions with animals, avoids the presumption that animals are merely our property to exploit and enjoy, and acknowledges our limitations in providing ideal living conditions. Yet human activity is well on its way to making captive care the only option for certain animals.²¹⁷ Sanctuaries and zoos, even if they occupy interstitial ethical and legal space and have different ideological agendas or animal care priorities, will remain important sites of animal husbandry. In an area of the law with little government enforcement, it is crucial that third-party accreditors operate transparently and reliably.

In this Note, I have identified and analyzed major regulatory and informational gaps in the work of accrediting and understanding the spaces that house captive wildlife, and I have argued for incremental improvements. Mine will not be the only proposal to improve how an individual, searching for a zoo to visit, a sanctuary to support, or a

²¹⁴ Winders, *supra* note 7, at 162; *see generally* EDWARD O. WILSON, *BIOPHILIA* 85 (1984) (coining the term “biophilia” and defining it as humans’ “urge to affiliate with other forms of life”).

²¹⁵ Winders, *supra* note 7, at 163.

²¹⁶ Burke, *supra* note 26, at 69; *see also* RUDY, *supra* note 57, at 148 (recounting a visit to a sanctuary in which the guide “insisted that the goal of the sanctuary movement was to put itself out of business”); Winders, *supra* note 7, at 164 (suggesting that “the best and most honest” of the professionals who run sanctuaries will say that their work “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”).

²¹⁷ *See, e.g.*, Joe Cochrane, *Borneo Lost More than 100,000 Orangutans from 1999 to 2015*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/science/orangutans-endangered-species.html> (stating that human uses such as agriculture and logging contributed to the loss of half the orangutans—an endangered species—in Borneo); Dave Hone, *Why the World Needs Zoos*, THE GUARDIAN (Mar. 8, 2017), <https://www.theguardian.com/science/2017/mar/08/why-the-world-needs-zoos> (noting that “many animals are critically endangered in the wild and may go extinct there soon but are going strong in zoos” and that “[o]ngoing and future issues from climate change” will continue to endanger many animal species).

bear to “adopt,” can glean more detailed information and peel back the marketing curtain. But, in a conversation that is just beginning, I hope it is a useful first step.