

## LVM: Session 6

**Author:** Paul Waldau. D.Phil., J.D.

In the first hour, we will address ways in which law impacts wildlife. In the second hour, we turn to law and research animals.

### 1. Wildlife and Law

As Tannenbaum notes (1995, at 527), there "appears to be virtually universal enthusiasm among veterinarians about the profession's growing involvement in the treatment and protection of wildlife." But, as he further notes on the same page, there are "many difficult ethical issues" that arise with wildlife. We will discuss ethical issues in the second half of the course—here we ask, *what about legal issues?*

Although there are lots of laws dealing with wildlife, in many respects this area remains highly *unregulated*, or, when regulated, *unenforced* when it comes to many situations likely to be encountered by veterinarians. It is often true that, in a theoretical way, humane regulations are supposed to apply to wildlife, but the realities are often that there is a lack of enforcement of relevant laws (due either to a lack of funding or, sadly, to a lack of concern). Occasionally the high profile case (intentional harming through, for example, a vicious means of killing an animal that wasn't harming anyone) is prosecuted. But that remains the exception rather than the rule.

As to what causes the failure of our society to engage wildlife fully, it is clear that it is a very complex phenomenon. The failure is due in part to a lack of political will; yet, some negative features of our treatment of wildlife are due to longstanding negative attitudes toward nonhuman animals and wilderness.

Much of this is, as Tannenbaum's enthusiasm suggests, now being challenged in several ways. We now have a diversity of views in our culture regarding wild animals—so even if it remains true that some people consider *any and all* wildlife to be vermin, many other people now consider lots of forms of wildlife to be "neighbors," important environmentally and ethically, and even sacred.

The diversity of views about wildlife that you are likely to encounter is a byproduct of the many sources we draw from when we think about "wild animals." For example, contemporary discussions about wildlife are full of references that come from environmental ethics, religious traditions, urban lore, and animal rights.

What is important, as suggested by Tannenbaum's comments, is that **views are changing**. In response to this, **LAWS ARE ALSO CHANGING**, but very irregularly. And, as always, **state laws vary dramatically**—for example, while Massachusetts is very strict, Texas is very loose on wildlife issues.

Veterinarians are trained in the biology of individuals and, less often, in the biology and ecology of species—so the veterinary profession has an important role to play in our engagement with wildlife (whether this is the realm of law or some form of ethics).

- **As a practical matter**, you would do well to **HAVE SOME TELEPHONE CONTACTS** that can help you when you are dealing with wildlife issues. The laws can be technical and the ethical issues thorny. For example, if you are working in this state, you can call the local MassWildlife office. The closest address to this campus is **MassWildlife**, Natural Heritage and Endangered Species Program, Field Headquarters, 1 Rabbit Hill Road, Westborough 01581 (email: Mass.Wildlife@state.ma.us). And you can always visit the homepage of your state's wildlife department. In Massachusetts, the website address is [http://www.mass.gov/dfwele/dfw/dfw\\_toc.htm](http://www.mass.gov/dfwele/dfw/dfw_toc.htm).

Here's an **important rule** to know: **in American law, a wild species is one that is not domesticated, that has not been tamed for economic uses, or typically does not live in association with people.** So the inquiry about which animals are "wild" is at the level of species, not at the level of the individual animal.

As to WHO "OWNS" WILDLIFE, Tannenbaum notes at 529, "The basic principle of American law is that the state and federal governments own all wild animals on their respective lands in trust for the people." Hence, government power over wildlife is extremely broad.

Here are a few other general features of wildlife law:

- **State law controls generally, but federal law can override** (recall the preemption concept already discussed).
- These governments give permission either in blanket form (as with state rules allowing exotic birds and aquarium fish to be kept as pets), or through licenses.
- **Requirements vary from state to state**, so you must know several different things:
  - **local laws**
  - **state laws**
  - **federal laws**

Interestingly, while there is a **clear legal agenda to manage wildlife**, on the whole, one might argue that, with regard to **ETHICAL obligations, there is no federal agenda**. In other parts of this program, you will learn that some people (such as the prominent Bernard Rollin of Colorado State University) argue that laws regulating the care of laboratory animals reveal a federal policy toward nonhuman animals. Is this an argument that can be made with regard to wild animals? (Rollin has recently made a similar argument regarding farm animals—see JAVMA, September 15, 2005, JAVMANews.)

- Remember that the **federal Animal Welfare Act does not generally cover wild animals.**
- The federal Endangered Species Act is a major piece of legislation for many reasons. It addresses many forms of wildlife—and, importantly, it

does not include provision addressing veterinarians' right to euthanize members of endangered species brought to them.

- There are some transportation provisions in federal and state laws that can affect the handling of wildlife.
- State laws are the laws that will most immediately and frequently impact you, if only because you aren't likely to be dealing with endangered species all that much, and the state laws incorporate these anyway.
- Handling animals that are designated rabies vectors is much more subject to regulation than is handling members of other species.
- **Regulations are often the most important part of the law to know** because they are usually the most specific.

### Some specifics for Massachusetts

- **Good Samaritan exemption:** States often have a regulation allowing veterinarians to temporarily treat sick and injured wild animals. (See, for example, Massachusetts, 321 Code of Mass Regulations, Section 2.12(12), which is a Good Samaritan exemption not unlike Section 58A of the MA practice act.) Notice that this language comes from a place *other than* the Massachusetts practice act governing veterinarians—in other words, there are protections in *other parts of the state laws* that can be very helpful. Here's the language of the exemption: "(12) Exemption. Licensed veterinarians temporarily treating sick and injured animals are exempt from the licensing requirements provided that: (a) accurate records are kept on forms provided by the Director and submitted annually not later than January 31; and (b) the Director is notified immediately of the presence of any endangered, threatened or special concern species listed pursuant to the U.S. Endangered Species Act or to 321 CMR 10.60."
- The **taking and possession of native species from the wild** is governed by M.G.L. c. 131, § 5, and 321 CMR 3.05. Generally, the public is not allowed to rehabilitate native species. Raccoons, which are not legal in Massachusetts absent special permission, are legal as pets in some neighboring states (such as New Hampshire)—that can mean that the client of Massachusetts-licensed veterinarians might bring in such an animal.
- Non-native species, often considered "pest" species, are less protected generally—but be very careful in this area. **Possession, sale, and propagation of both native and exotic species are governed** by M.G.L. c. 131, § 23, and 321 CMR 2.12 and 9.01.
- **State-listed "rare" species** are governed by provisions of c. 131A and 321 CMR 10.00. **Strict penalties** may be applied to violations.
- Consider this question—must a Massachusetts veterinarian report a client's possession of illegal wildlife? What if someone brings you a sick

primate? What if there is a risk to the general public's health? How would your confidentiality obligations play out here?

One indicator of how little wildlife is on the "legal radar screen" is this comment: Garbe notes (Wilson 1993, at 408) that extra-label use of drugs on wildlife isn't the subject of much regulation; she says, "**regulations dealing with the use of drugs, biologicals, and pesticides for wildlife are virtually non-existent.**"

**SUMMARY: the basic question is, what are veterinarians presented with a wild animal legally allowed to do?** As a practical matter, there isn't a lot of detailed material on what private practice veterinarians are supposed to do with wildlife.

**SO ... LISTEN CAREFULLY TO VETERINARIANS WHO ARE EXPERIENCED WITH LOCAL SOLUTIONS TO LOCAL PROBLEMS ... AND KEEP THE PHONE NUMBERS OF THE TUFTS WILDLIFE CLINIC AND OUR STATE WILDLIFE AGENCY NEARBY.**

## **2. Readings and Resources**

### **First Hour**

- Wildlife and Law (see above)

### **Recommended only**

- There is abundant information on law, policy, practical options, and references at the "Wild Neighbors" page of the HSUS website - [http://www.hsus.org/wildlife/urban\\_wildlife\\_our\\_wild\\_neighbors/](http://www.hsus.org/wildlife/urban_wildlife_our_wild_neighbors/)

### **Second Hour**

- Research Animals and Law
- JAVMA, June 15, 2000, "Quality of Life in Animals"
- JAVMA, July 15, 2002, "Pain management in laboratory animals—are we meeting the challenge?"
- JAVMA, January 1, 2004, Letters to Editor, page 34 only, "Thoughts on laboratory animal veterinarians"