

A SHORT COMMENTARY ON PROHIBITED (NEGATIVE) LISTS FOR THE REGULATION OF ANIMALS WITHIN A JURISDICTION

INTRODUCTION TO NEGATIVE LISTS

In recent years, many municipalities, provinces and states have been examining options for dealing with the regulation of both domesticated and wild (exotic) animals within their boundaries. In some cases, these examinations have been prompted by incidents within a jurisdiction, such as a sensational animal escape or a human fatality, while others are merely part of a process of regular legislative review and updating.

Many jurisdictions have traditionally tried to regulate, to one degree or another, the keeping of animals by private citizens through the use of prohibited lists (also known as Negative or black lists). Negative Lists identify which animals cannot be kept by private citizens (except, in some cases, under special conditions) within a jurisdiction.

When Negative Lists first surfaced decades ago, they were largely a response to the physical danger some animals posed to members of the public. For example, the keeping of tigers and lions as pets was very common in many areas, so incidents, including human injuries and fatalities involving both big cat owners and bystanders, were not uncommon. Those kinds of incidents led many jurisdictions to respond by prohibiting the keeping of certain dangerous animals by private citizens.

Over time, other potentially dangerous animals were added to the growing number of Negative Lists. Today there is a relatively consistent set of animals found on Negative Lists. They include a variety of mammals, a very small number of birds (primarily those that may pose a potential nuisance issue in urban environments), venomous animals, lizards that reach or exceed an adult length of 2m and snakes that reach or exceed an adult length of 3m. Some Negative Lists also included red-eared slider turtles due to disease concerns.

EXPANSION OF NEGATIVE LIST CRITERIA

While the criteria for including a species (or larger taxonomic grouping) on a Negative List in the past tended to be focus on whether or not an animal posed a human safety risk or was a potential nuisance, discussions about what exotic animals should be prohibited has changed substantially. As knowledge of animal biology and behaviour (including the cognitive, emotional and social capabilities of “so-called” lower animals) has increased and societal perspectives about animal welfare and well-being have shifted, discussions about inclusion criteria have expanded considerably. Today, in addition to human safety and nuisance issues, a variety of other criteria may be considered including, but not limited to, animal welfare, human health issues (e.g., zoonotic disease), environmental protection, jurisdictional capacity to handle, house, rehome and/or dispose of exotic animals, availability of suitable, expert veterinary care, etc.

DISPROPORTIONATE EMPHASIS ON MAMMALS

In past years, largely due to the emphasis on human safety issues, prohibited animal lists focused mostly (but not exclusively) on mammals that had the potential to cause human injury or death and/or substantive nuisance issues. However, as inclusion criteria for prohibited lists become more comprehensive, if properly applied, there should be a corresponding increase in the number of species added to those lists. That would include expanded numbers of birds, reptiles, amphibians, fish and invertebrates which, to date, have been grossly underrepresented on prohibited lists. With expanded prohibited list criteria, including, most importantly, animal welfare and potential risks to natural environments, the numbers of additional animal species in every category will increase substantially.

EXPANSION OF ANIMALS ON NEGATIVE LISTS

Animal Welfare

If additions to prohibited lists are based on animal welfare concerns, meaning the ability of non-expert custodians to house and care for particular species in a home environment in a way that satisfies each animal's biological, behavioural and social requirements, then the number of bird, reptile, amphibian, fish and invertebrate species listed will expand substantially. In recent years, thousands of scientific papers have provided important insights into the cognitive, emotional and social capabilities of non-mammalian species confirming that these animals experience the same kinds of health, welfare and well-being issues that mammals do and have requirements that are similar in kind. There has also been a rapid expansion in animal welfare science and an increase, for certain species, in knowledge of captive housing, husbandry and management needs. Collectively, this tsunami of new science and information clearly indicates that the often minimalist conditions provided to animals in the past (and to a great extent, currently) negatively impacts, often severely, animal health, welfare and well-being. If animal welfare is properly considered, then hundreds or thousands of additional species of birds, reptiles, amphibians and other animals will need be added to prohibited lists.

Human Health and Safety

As previously mentioned, many prohibited lists have focused on animal species that pose an immediate and demonstrable physical safety threat to humans. They include obviously dangerous animals such as the big cats, bears, wild dogs and venomous snakes, to name just a few. However, if other risks to human health, primarily zoonoses, are seriously considered, then many additional species (or families or classes) may warrant inclusion on prohibited lists. A comprehensive list of animals that pose a significant zoonoses risk to humans, or enhanced risks to vulnerable members of human populations, would include most, if not all reptiles, a large number of amphibians, a significant number of birds and small mammals. Depending upon how robust human health and safety criteria are considered, the number of species that could be added to prohibited animal lists range from many dozens to many thousands.

Environmental Protection

If the potential environmental threats posed by the private keeping of exotic animals is considered, then the number of species added to prohibited lists would expand by hundreds or thousands of species. Primary risks include the possibility of escaped or released exotic animals establishing themselves in new environments where they have the potential to outcompete or increase pressure on existing native wildlife populations, as well as the potential of escaped or released exotic animals introducing new, novel diseases and/or parasites into existing native wildlife populations. While the numbers of exotic species able to permanently establish themselves in Canada is mitigated due to the severity of Canadian winters in most regions of the country, there is still a risk that some species may be able to adjust to conditions outside of their historical ranges (e.g., red-eared slider turtles) or that they may survive in specific regional pockets of habitat that maintain micro-climate conditions. However, the potential risk of new and novel disease organisms being introduced into native wildlife populations is a more serious threat that has already taken its toll on many kinds of animals throughout the world. Perhaps the best example is Chytridiomycosis, an infectious fungal disease responsible for dramatic population declines and extinctions of amphibians globally. Releasing even a single infected amphibian into the wild has, given the right conditions, the potential to create an epizootic. If both invasiveness and disease risks are taken into account, then hundreds or thousands of additional species should be considered for inclusion on prohibited lists.

Other Considerations

Some of the criteria for inclusion on prohibited lists may vary from jurisdiction to jurisdiction. They may include, but are not limited to, the size and budget of relevant animal control agencies, the ability of a jurisdiction to provide meaningful oversight, the internal expertise of relevant staff to identify, handle, house and care for exotic animals, the existence of suitable venues for the disposal of exotic animals, the easy availability of expert veterinary and biological advice, to name just a few.

CONCLUSIONS

Proponents of keeping non-domesticated exotic animals as pets tend to promote the erroneous idea that prohibited lists are the easiest and most effective way to regulate exotic animals within a jurisdiction. In the past, when nothing more than the potential physical danger an animal posed to its owner, bystanders or neighbours was considered, there was some legitimacy to the claim that prohibited lists were easy. Today, as jurisdictions add additional criteria to their examinations of exotic animal regulation, that approach is no longer the easiest, most effective strategy for dealing with the control of animals. When animal welfare, human health and safety, environmental protection and jurisdictional issues are meaningfully considered, the number of animals that could potentially qualify for inclusion on prohibited lists could reach into the many thousands. Assessing each species (or even each family) on an individual case by case basis is beyond the capacity of most any municipality and even many regional or provincial/state agencies. A comprehensive review would take considerable resources and many months or years to complete as the onus is on the jurisdiction to do the required work on each assessment. The easiest and most cost effective approach to the regulation of animals within a jurisdiction

today is through a positive (permitted) list where the onus on proving that a species satisfies inclusion criteria is the responsibility of those people, businesses or organizations who seek to keep, trade, sell or otherwise use them.

However, if a prohibited list approach is maintained in a jurisdiction, then the same criteria that are used to determine whether or not an animal is added to a Positive List should be used to determine whether or not they should be added to a Negative List. They would include, but are not necessarily limited to, animal welfare, human health and safety, environmental protection, and jurisdictional issues. The process is, for all intents and purposes, the same for Negative or Positive Lists. The primary difference in the process is who is responsible for doing the work.

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