



The Humane Society of the United States  
2100 L Street, N.W.  
Washington, D.C. 20037  
(202) 452-1100  
FAX (202) 778-6132

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TESTIMONY OF

ERIC SAKACH, INVESTIGATOR

THE HUMANE SOCIETY OF THE UNITED STATES

BEFORE THE

HOUSE COMMITTEE ON AGRICULTURE

SUBCOMMITTEE ON LIVESTOCK, DAIRY AND POULTRY

HEARING ON THE PACKERS AND STOCKYARDS ACT OF 1921

MARCH 5, 1992



Mr. Chairman, members of the subcommittee, I am Eric Sakach, field investigator with the West Coast Regional Office of The Humane Society of the United States (HSUS). Accompanying me is Dr. Melanie Adcock, Director of Farm Animals at The HSUS. Located in Washington, D.C., The HSUS is the nation's largest animal protection organization with 1.5 million members and constituents. We appreciate this opportunity to address the subcommittee regarding the downed animal problem.

As a field investigator for The HSUS, I have been involved in investigations of livestock handling practices at markets for over seven years and have visited dozens of livestock markets throughout the Western U.S. I am here today to express our deep concern for the suffering of downed animals at livestock markets, to submit new evidence confirming the continuing mishandling of these animals at livestock markets nationwide, and to present The Humane Society's proposed solutions to this problem.

#### Background

The problem of downed animals is not a new one, nor has it just recently come to the livestock industry's attention. In fact, since 1985, Dr. Temple Grandin, a well-known livestock handling expert from Colorado, has brought this problem to the attention of the industry through a series of articles and lectures on the topic. These articles and lectures highlight the mishandling of downed animals and calves as two problems which should be resolved.

Another indication that this problem is not new for the livestock industry is also reflected in a Spring 1991 Animal Industry Foundation newsletter which states that "the issue of downed animals is one with which all of animal ag has wrestled for years."

On May 19, 1991, the mistreatment of downers at livestock markets was graphically brought to the attention of industry as well as the American public through the NBC television program, "Expose". This TV special documented numerous incidents where ill animals were severely neglected and included video footage of an extremely distressed downed cow being dragged out of a truck by a chain wrapped around one hind leg. This vivid portrayal of such gross mishandling shocked the public and stimulated a renewed interest in this problem.



Subsequently, representatives of industry repeatedly reassured the public that the downed animal problem would be resolved through industry self-regulation and self-policing. In an attempt to promote timely resolution to the problem, The HSUS endeavored to arrange a meeting with several key industry groups to discuss the issue. Our goal was to work with industry to find a mutually agreeable resolution -- one that would include the development of a concrete plan for self-regulation. While some segments of industry were interested in meeting and developing such a plan, others were not.

Similarly, certain segments of industry have taken a proactive stance on this issue, while others have not demonstrated the same degree of concern.

Unfortunately, it has become clear that while several excellent policies, publications, and statements have been issued by certain industry groups, there has not been a unified industry-wide push to develop a plan for self-regulation and to eliminate the downed animal problem.

#### Evidence That The Problem Continues

It has also become clear that the mistreatment of downers continues to occur nationwide and can be found even in brief, random visits to livestock markets. We believe that the NBC "Expose" program did not, in fact, portray an isolated example of a "bad" stockyard, but instead served to flag a serious problem within industry that is in need of immediate attention.

Industry maintains that downers only amount to .1% of livestock traded. But it must be understood that this .1% represents about 68,000 downed animals a year being subjected to handling and transport. Furthermore, sufficient confirmation is now available from multiple sources that the handling of downed animals continues to be a problem despite industry's pledge to self-regulate.

Virgil Rosendale, Administrator of the Packers and Stockyards Administration, addressed this issue at the field hearing held by the Livestock Subcommittee on January 15th in Amarillo, Texas. Although we understand a full report is still pending, he stated that unreasonable practices and downers have been found in 10% of their investigations of stockyards to date.

Farm Sanctuary (a nonprofit organization located in Watkins Glen, New York) conducted a survey of 24 stockyards in September, 1991, during which they found downed animals at 17% of the stockyards visited. In each instance, the needless suffering of these animals was documented.



In the fall and winter of 1991, five HSUS investigators visited 31 livestock markets in seven states. Downed animals were found at 11 of the markets visited. Abusive treatment and neglect of extremely ill and suffering downed animals was witnessed at 73% of those 11 markets. Our investigators witnessed incapacitated animals dying from neglect or being discarded to die at over 1/4 of the markets with downers present. At almost half of these markets downed animals were trampled. We have also documented a steer being winched by the neck, downed animals being dragged by their ears and extremities, and the callous attitude of numerous auction employees toward these suffering animals. (For a summary of the results of this investigation, please see Attachment I.)

#### Industry Self-regulation Ineffective

It is the conclusion of The HSUS that industry has not been able to solve this problem through self-regulation. We are deeply concerned that the suffering of downed animals has been allowed to continue for so long; and we have come to firmly believe that this problem can only be resolved by oversight from outside the industry.

More than six years after industry journals began carrying articles warning industry to "clean up its act" on downers, more than one year after the legal counsel for the Livestock Marketing Association printed its advice for markets to avoid accepting downed animals or having downed animals on their property, and more than ten months after a nationwide television show exposed this problem to the public, the downer problem has not been resolved. Nor are there any indications that the livestock industry is united in its dedication to resolving this problem or that an industry-wide plan for self-regulation is on the horizon. And no enforcement plans have been seriously contemplated.

Furthermore, the majority of the problems we are continuing to witness are not practices that are considered acceptable by responsible producers and conscientious livestock markets in this country. It is not likely that these practices were ever considered acceptable; and they are not practices that industry would defend to the public. While national attention and industry efforts have not brought about change, it is unlikely that the individuals who continue to ship emaciated and neglected downed animals and those who abusively handle downed animals will ever be reached through education programs and the issuance of progressive policy statements. We believe a much stronger message is needed for those in industry who continue to turn a deaf ear to concerns about downed animals and for those who continue to tarnish the reputation of the livestock industry. If the message is to be effective, it must be accompanied by enforcement measures.



### No Effective Enforcement Available

It is our belief that effective enforcement measures for dealing with downed animal abuse are not currently available. Industry has not been able to police itself and downed animals have no concrete legal protection.

Farm animals are specifically exempted from anti-cruelty statutes in some states. In other states, anti-cruelty statutes are vaguely written and interpreted to exclude farm animals. Furthermore, to press charges under these statutes, one must first convince a prosecutor to take the case. As might be expected, convincing a prosecutor to take such a case can be extremely difficult, especially when the circumstances that resulted in cruelty are often categorized as "common" livestock practices.

In addition, there is no protection for downed animals under federal law. Farm animals used for food and fiber are not covered by The Animal Welfare Act. The Packers and Stockyards Administration has jurisdiction over the marketing of livestock at stockyards under the provisions of the Packers and Stockyards Act. However, the Packers and Stockyards Act only protects against the loss of an animal's economic value and does not pertain directly to individual animal welfare concerns. The Act is particularly difficult to apply to the mistreatment of downed animals, as the relevant regulation (201.82) is designed only to protect the economic value of an animal. In some cases, the very action that might be required to relieve suffering might be in direct conflict with this regulation.

### Solutions

Resolving the downed animal problem will require a multifaceted approach.

First, all pertinent information regarding the handling of downed animals should be made available. To this end, we would request that the subcommittee set a date for The Packers and Stockyards Administration to present a formal report of their ongoing surveillance of livestock markets. A major part of this surveillance program includes collecting information on the treatment of downed animals -- information that will help to shed light on this problem.

Second, it is obvious that if 75-90% of downed animals can be prevented from becoming downers, emphasis should be placed on prevention instead of being focused on what to do with these animals once they become downers. Prevention coupled with



education programs and continued efforts at self-regulation will help to resolve this problem. But these solutions are not likely to change the practices of those who continue to avoid addressing this problem and that continue to mistreat downed animals. Therefore, we believe a legislative solution is also required.

We believe an amendment to the Packers and Stockyards Act specifically addressing the handling of downed animals would clarify what constitutes acceptable handling for these animals and would set a uniform standard across the states. It would also allow for enforcement measures to be utilized when unacceptable treatment of downed animals occurs. A federal solution, as opposed to individual state solutions, would also remove any unfair advantages that might result from instituting disparate state guidelines.

Should the Packers and Stockyards Act be amended, we support those segments of industry recommending that downed animals be euthanized on the farm, as well as those that would agree to the additional option of shipping downed animals directly to slaughter. These solutions go hand in hand with recommending that downed animals not be accepted at livestock markets, a position which we fully endorse. We believe these concepts should be incorporated into legislation.

#### "No Downer" Policy at Livestock Markets:

It is our belief that livestock markets are not generally suited to addressing the special needs of downed animals. We further believe that it is inappropriate to subject these animals to the additional stress, pain, and handling of the auction process.

The HSUS maintains that legislation implementing a "no downer" policy at livestock markets is the best approach to resolving the downed animal problem. Likewise, it will solve many other problems associated with moving these animals through livestock markets. These problems are addressed below.

#### 1. A "no downer" policy will address the difficulty of handling and caring for downed animals at livestock markets.

Downed animals are extremely difficult if not impossible to handle humanely. This concern is shared by many in industry, including the Minnesota Livestock Marketing Association which states that "...it is near impossible to unload and/or move downed and severely distressed animals in a humane manner without first euthanizing them...".

The Colorado Cattlemen's Association and The National Pork Producers Council (NPPC) also address this concern when recommending the euthanasia of downed animals/hogs on the farm.



In addition to the difficulty of moving and handling downed animals in a humane manner, these animals have other basic needs that are difficult to meet throughout the auction process. Downed animals must be fed and watered individually, they require bedding and a separate pen, and frequently they are very ill and in need of veterinary attention. In some cases, the suffering of downed animals is so severe that the only humane solution is immediate euthanasia.

United Markets Corporation and numerous other markets have responded to these and other concerns by adopting "no downer" policies. The NPPC, The Livestock Conservation Institute, The Minnesota Livestock Marketing Association, and The Independent Cattlemen's Association of Texas are all either asking livestock markets to refuse to accept downed animals, or discouraging the shipment of incapacitated animals from the farm to livestock markets.

Similarly, Virgil Rosendale, Administrator of the Packers and Stockyards Administration, referred to this concern in a July 8 letter to stockyard owners and operators by stating that "Many stockyards may encounter difficulty in handling downed animals humanely. Under such circumstances, it is the opinion of the Packers and Stockyards Administration (P&SA) that the most effective solution is for stockyards to refuse to accept such livestock."

2. A "no downer" policy will encourage prevention as the primary focus.

Since 75-90% of downed animals can be prevented from becoming downers, the primary focus must be on preventing downers. The best way to accomplish this industry-wide is for livestock markets not to accept downers. In fact, Gail Tritle, President of the United Stockyards Corporation, stated that the purpose of United Stockyard's adoption of a 'no downer' policy was "to shift the issue from what to do with these animals to not having them." He also noted, as many others have, that most producers take care of downers themselves.

A "no downer" policy at livestock markets removes the incentive for sending problem animals to stockyards in the hope of receiving some salvage value for the animal and it would eliminate the ability to use stockyards as a disposal system for downed animals. Likewise, greater care would be taken during loading and transport. It would also eliminate the additional stress, suffering, transport, and handling of the auction process and relieve these animals of their suffering in a more timely manner.



Although the concern is often expressed that producers will be harmed by a "no downer" livestock market policy, we have not heard this concern widely echoed by producers themselves. The majority of producers with whom we have spoken recognize that this issue has the potential to damage the industry's public image, and they are interested in resolving this problem quickly. A large number of producers have told us they already euthanize downed animals on their farms. Additionally, when prevention programs are emphasized, the number of downed animals will decrease by 75-90%, we asked several livestock producers to share their viewpoint on downed animals with us. We request that Attachment II, which is a compilation of their views, be submitted for the record.

3. A "no downer" policy would resolve many problems livestock markets currently encounter with these animals.

Not only do downed animals present animal welfare challenges, they also present markets with a number of other potential problems that can be avoided by not accepting these animals. In January, 1991, the legal counsel for the Livestock Marketing Association warned that "Any market that does accept such animals does so at substantial risk, both economically and legally."

They stated that downed animals require extra personnel and equipment, the cost to the market almost always exceeds the commission, the producer is usually unsatisfied with the price, and having these animals in a market leaves a market vulnerable to protestors and to lawsuits by animal welfare officers.

4. A "no downer" policy would send an important message to the public about animal handling and food safety.

Accepting a "no downer" policy and rectifying this problem as soon as possible will also help to restore the public's faith in the industry and reassure them that the abusive treatment of suffering animals as witnessed on the NBC "Expose" is fully condemned by the industry and has been effectively dealt with.

It is also worthwhile to note that some of the more insightful leaders of industry have recognized that a "no downer" policy at stockyards will help to keep this issue from becoming one of food safety. When United Markets announced their "no downer" policy, "livestock organizations present for the announcement greeted the new policy as an important step in expanding their quality assurance programs." (For further industry comments taken from public sources, please see Attachment III.)

5. Fewer federal dollars would be needed to monitor a "no downer" policy.

Still another advantage of enacting federal legislation that institutes a "no downer" livestock market policy is that fewer federal dollars would be required to monitor such a policy than would be required by instituting guidelines for downers moving



through livestock markets. Such guidelines would be difficult to enforce and would require that a more in-depth and expansive surveillance program be instituted than would be required to monitor a "no downer" policy.

### Conclusion

Despite the best of intentions and some extremely progressive actions on the part of industry, it has become clear that self-regulation is not addressing the downer problem sufficiently. What amounts to a great deal of individual suffering for many of these animals is such a small part of industry's business "as to be immeasurable". The welfare of these animals must become one of the key issues in deciding how to resolve this problem. The public will not continue to tolerate the abusive handling and neglect to which many downed animals are being subjected.

Furthermore, it is completely unacceptable that 50-61,000 of these animals can be prevented from becoming downers simply by treating or marketing these animals more promptly and by improving management, handling and transportation practices.

The downed animal issue is one which finds The HSUS in agreement with many industry voices. We applaud those in industry who have adopted strong stands on this issue and who have taken swift action to correct this problem. We commend Congressman Stenholm for demonstrating his concern for this problem and for providing a forum for discussing the humane handling of downed animals. The HSUS welcomes the opportunity to work with this subcommittee and with industry to resolve this problem.

Education programs, peer pressure, and strong policy stands will help to resolve the downed animal problem. But stronger action is required. We urge the subcommittee to oversee the survey of the Packers and Stockyards Administration and to set a date for a formal report. And, we urge Congress to pass legislation to ensure that this problem is properly addressed. Thank you.