

United States Senate

WASHINGTON, DC 20510

November 16, 2022

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C., 20201

The Honorable Lawrence A. Tabak
Acting Director
National Institutes of Health
9000 Rockville Pike
Bethesda, Maryland 20892

Dear Secretary Becerra and Acting Director Tabak:

We write to request that you take action to amend the Public Health Service Policy on Humane Care and Use of Laboratory Animals to include cephalopods (i.e., octopus, squid, and cuttlefish) within the definition of “animal” so that these animals will receive the minimum protections for “humane” handling and care required by that policy. In addition, we request that you take action to update the Guide for the Care and Use of Laboratory Animals to reflect proper care and handling of cephalopods in accordance with the scientific, consensus-based “Guidelines for Care and Welfare of Cephalopods in Research”¹ developed by CephRes, the Boyd Group, and the Federation of European Laboratory Animal Science Associations.

Cephalopods are increasingly being used in taxpayer-funded laboratory research across the country. However, because they are currently not considered “animals” under the Public Health Service Policy, these incredibly intelligent creatures are not assured of basic humane treatment with no avenue for accountability over the justification of their use, the details of their use--such as methods of anesthesia or euthanasia--and other important research considerations. The actions we request would bring the United States in line with several other countries and government entities that already afford these species humane treatment when used in government-funded research, including the United Kingdom, Canada, New Zealand, Australia, Switzerland, Norway, and the European Union.

In the creation of the Health Research Extension Act of 1985, Congress clearly stated that updating standards to reflect advancements in scientific knowledge is a necessary part of the Secretary of Health and Human Services’ duties. See, for example, the House Committee on Energy and Commerce Report on the bill, H.R. Rep. No. 99-158, at 40 (1985): “This ongoing process recognizes that such sensitivity cannot be captured in any set of rules, that standards of care will change in the future as science advances, and that the value of medical research requires such judgments to be professionally and scientifically sound.” A wealth of evidence from recent research demonstrates that cephalopods stand out from other invertebrates in terms of their

¹ Fiorito, Graziano, Andrea Affuso, Jennifer Basil, Alison Cole, Paolo de Girolamo, Livia D’Angelo, Ludovic Dickel, et al. “Guidelines for the Care and Welfare of Cephalopods in Research –a Consensus Based on an Initiative by CephRes, Felasa and the Boyd Group.” *Laboratory Animals* 49, no. 2_suppl (2015): 1–90. <https://doi.org/10.1177/0023677215580006>.

intelligence and capacity for pain, two criteria historically used to justify humane treatment requirements in research. The standards of care for these animals have changed, and the Public Health Service Policy on Humane Care and Use of Laboratory Animals should be updated accordingly.

On June 18, 2020, a group of concerned citizens and scientists petitioned the Department of Health and Human Services and the National Institutes of Health (NIH) to take the same actions we request. On July 24, 2020, Dr. Patricia Brown, Director of the Office of Laboratory Animal Welfare (OLAW) at the NIH, replied to the petition, stating: “OLAW’s Division of Policy and Education is currently considering options for providing guidance on humane care and use of invertebrates in NIH funded research and will seek public comment on proposed guidance.”

However, two years later, OLAW has not provided any guidance on the humane care and use of invertebrates or cephalopods in NIH-funded research, nor has OLAW sought public comment on any proposed guidance. Cephalopods remain excluded from the list of “animals” required by the Public Health Service Policy to be protected in federally funded research.

If the NIH is indeed fully committed to promoting the best possible care and use of the animals involved in the research it supports, as OLAW Director Brown assured petitioners in her July 2020 response, then the NIH must update its regulations to reflect the latest scientific understanding. We strongly urge the NIH to issue regulations to amend the Public Health Service Policy on Humane Care and Use of Laboratory Animals to include cephalopods within the definition of “animal” and to update the Guide for the Care and Use of Laboratory Animals to reflect proper care and handling of these complex creatures.

Thank you for your attention to this matter.

Sincerely,



Cory A. Booker
United States Senator



Sheldon Whitehouse
United States Senator



Ron Wyden
United States Senator



Brian Schatz
United States Senator