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January 7, 2013

Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Kevin Shea, Acting Administrator
Animal and Plant Health Inspection Service
U.S. Department of Agriculture
4700 River Road, Unit 84
Riverdale, MD 20737-1234

RE: AMENDED PETITION FOR RULEMAKING TO PROHIBIT PUBLIC CONTACT WITH BIG CATS, BEARS, AND NONHUMAN PRIMATES

Dear Secretary Vilsack and Acting Administrator Shea,

The Humane Society of the United States (HSUS), World Wildlife Fund (WWF), The Global Federation of Animal Sanctuaries (GFAS), The International Fund for Animal Welfare (IFAW), Born Free USA (BFUSA), The Fund for Animals ("The Fund"), and Big Cat Rescue (BCR) submitted a petition to the U.S. Department of Agriculture on October 18, 2012, requesting that the Secretary and Animal and Plant Health Inspection Service amend the Animal Welfare Act handling regulations to explicitly prohibit licensees from allowing members of the public to come into direct or unsafe close contact with big cats, bears, and nonhuman primates of any age.

Enclosed on the disc herein is an amended copy of the petition (and associated appendices), which is intended to supersede the version previously submitted and which includes the following changes:

- This amended petition reflects that the Detroit Zoological Society has joined as a co-petitioner.

- This amended petition adds several entities to the list of licensees engaged in public contact exhibition (*see* Appendix A regarding Animals of Montana (#81-C-0055), Josip Marcan (#58-C-0270), Walk on the Wild Side (#92-C-0159), Pamela Welch (#71-C-0171), and Wolves Woods and Wildlife (#41-C-0215)).[1]

- This amended petition also clarifies in the proposed regulatory text that veterinary students accompanying licensed veterinarians would also be exempt from the prohibition on direct and unsafe close contact, to ensure that veterinary students can undertake the necessary training to develop skills to treat exotic animals.

HSUS and our co-petitioners urge USDA to accept public comment on this matter, and we urge you to publish this amended version as soon as possible. Expedited action by USDA is needed to curb the rampant and dangerous trend of allowing members of the public to come into contact with big cats, bears, and nonhuman primates. A recent USDA enforcement action against a repeat offender engaged in unsafe public contact with dangerous wild animals highlights the need for a clear prohibition. *See In Re Sidney J Yost*, AWA Docket No. 12-0294 (including a claim that the licensee violated the Animal Welfare Act by exhibiting a lion on the Tonight Show before a live audience with insufficient distance and no barrier), *available at* http://www.aphis.usda.gov/fcia/enforcement_actions//2012/November/Animal%20Welfare%20Act%20(AWA)/Complaints/IL09100-AC_Sidney%20Jay%20Yost_031612_Redacted.pdf.

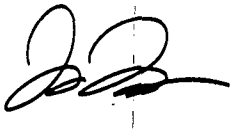
Further evidencing the need for regulation of this unsafe practice, many states have already taken steps to restrict public contact with dangerous wild animals and numerous other states are poised to consider legislation in the coming year to prohibit such activity. *See, e.g.,* Miss. Admin. Code § 40-1-32:VI; AZ Admin. Code § R12-4-407; Kan. Stat. Ann. § 32-1306(d); Tenn. Code § 70-4-404; Wash. Rev. Code § 16.30.010; NJ Admin. Code 7:25-4.9; 25 Tex. Admin. Code § 169.131; 3 Del. Admin Code § 304-6.0; LA Admin. Code tit. 76, pt. V, sec. 115; OR Admin. Rules § 603-011-0381; Ohio Rev. Code § 935.06 (as upheld in *Wilkins et al. v. Daniels et al.*, Case No.: 2:12-cv-1010 (S.D. OH December 20, 2012)). However, despite this trend toward prohibiting public contact, several states do not have such prohibitions. Thus, a federal prohibition is needed to establish uniformity on this issue. A federal prohibition is also needed because the commercial interests driving this practice are attempting to roll back certain existing state restrictions (for example, Michigan's

[1] The amended petition (Appendix A) also identifies two examples of unlicensed individuals (Dave Salmoni and David Mizejewski) who frequently exhibit big cats, bears, and nonhuman primates from unknown animal suppliers, often allowing unsafe close and direct contact with untrained members of the public. This raises concerns that such individuals are improperly exhibiting without a license and demonstrates how difficult it is to enforce the current performance standard when licensed exhibitors allow independent personalities to use their animals for exhibition purposes.

legislature recently passed a bill (later vetoed by the Governor) to allow members of the public to interact with bear cubs up to 90 pounds, which would pose a significant threat to public safety and would be inconsistent with USDA's current regulations). *See* Letter to the Editor from Deirdre Herbert, mother of a bear-mauling victim who became enamored with interacting with bears after working for an exhibitor who used bear cubs for photographic opportunities (Appendix A).

We appreciate your prompt attention to this matter.

Sincerely,



Jonathan R. Lovvorn
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http://www.detroitnews.com/article/20121117/OPINION01/211170305/1007/OPINION/Letter-Large-carnivores-aren-t-safe

The Detroit News

November 17, 2012

Letter: Large carnivores aren't safe

The Michigan Senate has passed a bill, Senate Bill 1236, which would weaken the state's Large Carnivore Act by allowing roadside zoos and other animal exhibitors to charge members of the public to handle captive bear cubs up to 36 weeks of age. While having a photo taken with a bear cub may seem harmless on the surface, I know from first-hand experience that the consequences of this legislation could be tragic and costly.

My 24-year-old son, Brent Kandra, was introduced to the naïve belief that bears and tigers were not dangerous animals when he began working in a mall pet store at the age of 17 years old. The pet shop owner allowed the public to handle and pose with bear and tiger cubs for photos. This early exposure to cubs did not enlighten him to the extreme dangers that these animals present when they become older. Then, one evening in August 2010, Brent was viciously mauled by a bear that had interacted with members of the public for years. The bear inflicted more than 600 wounds. The autopsy report states that Brent died from "multiple blunt impacts and sharp force injuries to the head, torso and extremities." Losing our son was devastating, and we don't want to see another family go through the experience of this preventable tragedy.

Even young bears have sharp teeth and long claws, and are powerful and unpredictable wild animals capable of harming someone, particularly children. In order to be used for public handling, the babies are taken from their mothers at just a few days or weeks of age. What will become of them once they grow up and are no longer useful for money-making ventures?

Michigan's Large Carnivore Act has protected citizens for more than a decade. If Ohio had passed a similar bill years ago, my son might still be alive. I urge the Michigan House to vote no on Senate Bill 1236.

Deirdre J. Herbert , Elyria, Ohio

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE

THE HUMANE SOCIETY OF THE UNITED STATES,

WORLD WILDLIFE FUND,

THE GLOBAL FEDERATION OF ANIMAL SANCTUARIES,

THE INTERNATIONAL FUND FOR ANIMAL WELFARE,

BORN FREE USA,

THE FUND FOR ANIMALS,

BIG CAT RESCUE, AND

DETROIT ZOOLOGICAL SOCIETY

PETITIONERS

PETITION FOR RULEMAKING TO PROHIBIT PUBLIC CONTACT WITH BIG CATS, BEARS, AND NONHUMAN PRIMATES

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Amended January 7, 2013
(originally filed October 18, 2012)

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I. *Notice of Petition*

Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Kevin Shea, Acting Administrator
Animal and Plant Health Inspection Service
U.S. Department of Agriculture
4700 River Road, Unit 84
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Washington, DC 20007

The Fund for Animals
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New York, NY 10019

Big Cat Rescue
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Detroit Zoological Society
8450 W. 10 Mile Rd.
Royal Oak, MI 48067

Dear Secretary Vilsack and Acting Administrator Shea;

The Humane Society of the United States (HSUS), World Wildlife Fund (WWF), The Global Federation of Animal Sanctuaries (GFAS), The International Fund for Animal Welfare (IFAW), Born Free USA (BFUSA), The Fund for Animals ("The Fund"), Big Cat Rescue (BCR), and the Detroit Zoological Society (collectively "Petitioners") hereby petition the Secretary of Agriculture and the Administrator of the Animal and Plant Health Inspection Service (APHIS), pursuant to the First Amendment of the United States Constitution,[1] the Administrative Procedure Act,[2] and U.S. Department of Agriculture (USDA) regulations,[3] to amend APHIS' animal handling regulations to explicitly prohibit Animal Welfare Act (AWA) licensees from allowing members of the public to come into direct or unsafe close contact with big cats, bears, and nonhuman primates of any age. Proposed regulatory text is included herein and, as discussed in this petition, adopting this proposed rule is necessary to promote animal welfare (as required by the AWA, 7 U.S.C. § 2143(a)) and conservation, and to protect public safety and consumer expectations.

Description of Petitioners

HSUS is the nation's largest animal protection organization with over 11 million members and constituents. Based in Washington, DC, HSUS works to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. HSUS actively works to improve the management of wildlife in captivity in order to promote animal welfare, conservation, and public safety. HSUS members regularly visit USDA-licensed exhibitors' facilities and enjoy seeing animals who are well cared for and appropriately displayed, but are distressed when they view animals being mistreated or exhibited in a manner that jeopardizes public safety and conservation efforts. HSUS also operates five animal care centers that provide care to thousands of animals, including big cats and nonhuman primates. That two of these facilities are licensed by APHIS means that HSUS has a strong interest in ensuring that all captive animal facilities are abiding by regulations to protect animal welfare and public safety.

WWF's mission is to stop the degradation of our planet's natural environment, and build a future in which humans live in harmony with nature. In order to achieve this mission, WWF (with more than 5 million members globally) focuses on ensuring that the world's biodiversity stays healthy for future generations and to reduce negative impacts of human

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[1] "Congress shall make no law ... abridging ... the right of the people ... to petition Government for a redress of grievances." U.S. CONST., amend. I. The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States v. Cruikshank*, 92 U.S. 542, 552 (1875); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967); *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

[2] 5 U.S.C. § 553(e).

[3] 7 C.F.R. § 1.28.

activity. WWF is particularly interested in tiger conservation, as 97% of wild tigers have disappeared since the beginning of the 20th century and there are now more tigers living in captivity in the U.S. than exist in the wild. To promote tiger conservation, WWF works with the 13 tiger range states in Asia and domestically to ensure that one of the primary threats to the species, poaching for traditional Asian medicine, is alleviated. WWF advocates for greater oversight of U.S. captive tiger numbers and disposition in order to ensure that captive tigers are not contributing to illegal trade and to ensure that the U.S. meets its international obligations. Because tigers are frequently bred and mistreated for the purpose of public contact exhibition, and because it is unknown how all of these tigers are disposed of, WWF has a concrete interest in stronger federal regulation of public handling at USDA licensed exhibition facilities.

GFAS was established to promote excellence in sanctuary management and in humane care of animals through international accreditation, collaboration, mentoring, and greater recognition and resources for sanctuaries, while seeking to eliminate the causes of displaced animals. There are over 80 sanctuaries accredited and verified by GFAS in the U.S. – these facilities have earned the highest level of credibility and are clearly distinguished from pseudo-sanctuaries and substandard facilities. GFAS sanctuaries do not allow direct contact or unsafe close contact between the public and big cats, bears, or nonhuman primates.

IFAW saves animals in crisis around the world. With close to 2 million members and projects in more than 40 countries, IFAW rescues individual animals from cruelty and advocates for the protection of wildlife and natural habitats. Protecting captive big cats, bears, and nonhuman primates in the U.S. is a core IFAW focus. In the U.S. to date, IFAW has rescued and relocated 120 captive big cats from backyard menageries and substandard facilities. In 2004, IFAW conducted a one-year investigation of 42 USDA-licensed facilities that revealed severely inadequate welfare practices. Public contact between dangerous big cats and humans – including very young children – was prevalent at many of the facilities. IFAW members regularly enjoy viewing animals humanely cared for and exhibited in a manner that protects the health and welfare of the animals and the public.

Born Free USA's mission is to end the suffering of wild animals in captivity, rescue individual animals in need, protect wildlife – including highly endangered species – in their natural habitats, and encourage compassionate conservation globally. The Born Free USA Primate Sanctuary in Texas provides care to over 600 primates, many of whom were rescued from abusive situations in roadside zoos and private possession. In 2012 alone, Born Free USA has rescued over 100 primates from substandard facilities.

The Fund for Animals is a national non-profit organization that advocates for preserving wild populations of animals and preventing abuse of captive wildlife. The Fund operates the Cleveland Amory Black Beauty Ranch (#74-C-0854), an animal care facility that

provides sanctuary to hundreds cf animals, including three tigers who were rescued from a substandard facility licensed by USDA.

Big Cat Rescue is one of the largest sanctuaries for big cats and is accredited by GFAS. As a nonprofit organization, BCR provides lifetime care to over 100 large felids, including tigers, lions, leopards, and cougars, who were abandoned or seized from substandard facilities and private owners. BCR strives to educate the public about these animals and the issues that captive and wild big cat populations face.

The Detroit Zoological Society's mission is to demonstrate leadership in wildlife conservation and animal welfare. To advance this goal the Detroit Zoological Society provides a broad audience with educational opportunities that lead to the appreciation and stewardship of nature. Through its Center for Zoo Animal Welfare, the Detroit Zoological Society promotes exotic animal welfare science and best practices. The Detroit Zoo is a licensed exhibitor that houses big cats, primates, and bears.

Request for Regulatory Amendment

Petitioners respectfully request that USDA and APHIS move expeditiously to address the welfare and public safety crisis caused by licensed exhibitors breeding and using big cats, bears, and nonhuman primates for public handling and adopt the regulation proposed in this petition. *See* 7 C.F.R. § 1.28 ("petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions"); 5 U.S.C. § 555(b) (Federal agencies are required to definitively respond to petitions and must "conclude a matter presented" to the agency "within a reasonable time"); *National Parks Conservation Ass'n v. U.S. Dept. of Interior*, 794 F.Supp.2d 39 (D.D.C.,2011); *In re American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C.Cir.,2004) ("a reasonable time for agency action is typically counted in weeks or months, not years"); *Telecommunications Research and Action Center v. F.C.C.*, 750 F.2d 70, 80 (D.C.Cir.,1984) ("delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake.").

Petitioners appreciate the agency's consideration of this matter and would be glad to provide any further information that is needed.

Respectfully submitted by:

Wayne Pacelle

Wayne Pacelle, President and CEO
The Humane Society of the United States

Leigh Henry, Senior Policy Advisor
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Patty Finch

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Adam M. Roberts

Adam M. Roberts, Executive Vice President
Born Free USA

Michael Markarian, President
The Fund for Animals

Carole Baskin, CEO
Big Cat Rescue

Ron Kagan, Executive Director and CEO
Detroit Zoological Society

II. *Introduction*

This nation is currently facing an epidemic of unqualified individuals and facilities possessing dangerous wild animals, which threatens both public safety and animal welfare. Thousands of big cats, bears, and nonhuman primates reside in exhibition facilities around the country that are licensed by APHIS yet routinely conduct activities that undermine animal welfare – for example, the commercial use of dangerous animals for public interaction and photographic opportunities.[4] Animals subjected to public contact exhibition (many endangered) are irresponsibly bred with no regard for genetic integrity; they are prematurely and forcibly separated from their mothers and deprived of normal biological and behavioral development; they are subjected to excessive handling that poses a risk to the health of undeveloped animals and to the safety of humans (especially children) interacting with them; they often travel the country in cramped enclosures for the commercial gain of licensees; and they are often disposed of at substandard facilities when they are no longer commercially useful. There is simply no safe or humane way to allow for

[4] Licensed exhibitors that are not separately accredited by the Global Federation of Animal Sanctuaries (GFAS) or the Association of Zoos and Aquariums (AZA) are far more likely to have unqualified employees and inadequate facilities and practices, such as allowing public contact with dangerous animals.

public handling of big cats, bears, or nonhuman primates of any age, and it is essential that APHIS explicitly prohibit such activity.

The Animal Welfare Act (AWA) requires USDA/APHIS to license facilities that engage in actions that substantially affect interstate commerce (such as exhibiting animals to the public or breeding/dealing animals[5]), and requires the agency to adopt regulations "to govern the humane handling, care, treatment, and transportation" of animals possessed by licensees. 7 U.S.C. § 2143(a). Because there are hundreds of licensed facilities that possess dangerous animals, it is imperative that regulations governing humane handling of animals at these facilities are clearly designed to effectively protect animal welfare and public safety even when no federal inspector is present to detect violations.

Unfortunately, numerous facilities that are licensed by APHIS currently operate in a manner that fails to protect animal welfare and public safety, and these licensees' actions undermine conservation efforts and consumer expectations that the federal government is only licensing upstanding facilities. In particular, by allowing members of the public to come into direct and unsafe close contact with big cats, bears, or nonhuman primates of any age (through interactive sessions and photographic opportunities), these licensees create an inhumane and dangerous situation not only during such contact, but for the entire decades-long life cycle of the animals involved.

One year ago the nation was horrified when a disturbed Ohio man released nearly 50 big cats, bears, nonhuman primates and other dangerous animals from his backyard menagerie, leading to the animals being killed in order to protect the surrounding community. Unqualified owners are able to acquire so many dangerous animals precisely because of the surplus of big cats, bears, and nonhuman primates that is created following irresponsible and unmanaged breeding of these species for public contact exhibition. Therefore, APHIS has a statutory duty to amend its regulations to explicitly prohibit public contact with big cats, bears, and nonhuman primates of any age, in order to ensure the humane treatment of these species and to protect public safety.

III. Examples of Facilities that Offer Public Contact with Dangerous Wild Animals

At least 70 licensed facilities across the U.S. are engaged in the unsafe and alarming business of allowing members of the public, including small children, to interact and pose

[5] Unfortunately, numerous individuals who do not exhibit animals have availed themselves of USDA licenses in order to take advantage of state laws that exempt such licensees from prohibitions on the possession of dangerous animals. A recent audit by the USDA Office of Inspector General found that 70% of the licensees with four or less animals were in fact pet owners, not exhibitors. USDA Office of Inspector General, Controls Over APHIS Licensing of Animal Exhibitors, Audit Report 33601-10-Ch, p. 5 (June 2010). APHIS must ensure that its licensing regulations are strictly applied, so that individuals who are not conducting regulated activities cannot obtain a license. APHIS must also ensure that all licensees comply with the animal protection mandates of the AWA.

with dangerous wild animals. The following USDA-licensed exhibitors[6] have allowed visitors to come into direct contact and unsafe close contact with big cats, bears, and/or nonhuman primates in recent years, and most of the following licensees continue to advertise for public handling of dangerous animals today.[7] *See* Appendix A for evidence of public handling at these exhibition facilities.

1) **Alabama Gulf Coast Zoo** (Gulf Shores, AL #64-C-0014)
2) **Aloha Safari Zoo** (Cameron, NC #55-C-0242)
3) **Animals of Montana** (Bozeman, MT #81-C-0055)
4) **Antle, Bhagavan** (d/b/a T.I.G.E.R.S., Myrtle Beach, SC #56-C-0116)
5) **Big Cats of Serenity Springs** (Calhan, CO #84-C-0069)
6) **Brown, Gerald** (Lancaster, PA #23-C-0024)
7) **Brown's Oakridge Exotics** (Smithfield, IL #33-C-0007)
8) **Bucks County Zoo** (Warminster, PA #23-C-0268 [license canceled 4/2/12])
9) **Capital of Texas Zoo** (Cedar Creek, TX #74-C-0644)
10) **Casady's Critters** (Cascade, WI #35-C-0235)
11) **Casey, Connie** (d/b/a Chimparty – Missouri Primates, Festus, MO #43-C-0315)
12) **Casey, James M.** (d/b/a A "Great Ape" Experience) (Las Vegas, NV #88-C-0195)
13) **Cherokee Bear Zoo** (Bryson City, NC #55-C-0118)
14) **Chestatee Wildlife Preserve** (Dahlonega, GA #57-C-0114)
15) **Coburn, William** (d/b/a Wild Acres Ranch aka Jungle Island Zoo aka Safari Adventures (at Kalahari Resort)) (Sandusky, OH #31-C-0211)
16) **Cook, Marcus** (d/b/a Zoocats, Inc. aka Zoo Dynamics) (Kaufman, TX #74-C-0426 [license revoked 2/17/12])[8]

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[6] Many of these facilities are affiliated with the deceptively-named Zoological Association of America (ZAA). While the AWA provides minimum standards for animal welfare, exhibitors may be privately accredited and voluntarily meet higher standards by becoming accredited by the Association of Zoos and Aquariums (AZA) or the Global Federation of Animal Sanctuaries (GFAS). The AZA is the only domestic organization that manages endangered species through Species Survival Plans (SSP) based on the best available science to promote the welfare of the animals and maintain genetic integrity of captive colonies. *See* http://www.aza.org/species-survival-plan-program/. In contrast, ZAA accredits facilities that do not promote welfare or conservation. The primary goal of ZAA is to promote exotic pet ownership and the exploitation of animals for entertainment purposes. *See* ZAA Mission Statement, *available at* http://www.zaoa.org/index.php?option=com_content&view=article&id=20&Itemid=3 ("Our mission is to promote the responsible ownership, management, and propagation of animals in both public and private domains"; "We strive to: . . . promote 'conservation through commerce' as the only sustainable alternative to failed command and control wildlife regulations."). Indeed, ZAA specifically allows its members to facilitate public contact with exotic animals. *See* ZAA Standards, http://www.zaoa.org/index.php?option=com_content&view=article&id=21&Itemid=22.

[7] Note that while a few of these licensees do not currently possess big cats, bears, or nonhuman primates that could be used in public contact exhibition (either because the animals they possess are so aggressive that they cannot be handled by anyone, or because the animals they recently used have been transferred to other facilities), these facilities would likely continue such commercial use if the opportunity arises.

[8] Note that while Mr. Cook's license was recently revoked, he apparently continues to operate as an "employee" of another licensee (Michael Todd d/b/a Todd's Pony & Hay Rides, #33-C-0388). *See* Fred

17) **Corley, Beth** (Wynnewood, OK #73-C-0167)
18) **Cougar Mountain Zoo** (Issaquah, WA #91-C-0003)
19) **Cub Creek Science Camp** (Rolla, MO #43-C-0241)
20) **Dade City Wild Things** (aka Stearns Zoological Rescue and Rehab) (Dade City, FL, #58-C-0883)
21) **DEW Animal Kingdom and Sanctuary** (Mount Vernon, ME #11-C-0017)
22) **DeYoung Family Zoo** (Wallace, MI, #34-C-0141)
23) **Dolci, Phil** (d/b/a Banana Derby) (Oakbrook Terrace, IL #33-C-0247)
24) **Engesser, Robert** (d/b/a The Zoo aka Jungle Safari) (Chiefland, FL #58-C-0295)
25) **Evans, Keith** (d/b/a Lion Photo Studios) (Henderson, NV #88-C-0064)
26) **G.W. Exotic Animal Park** (Wynnewood, OK, #73-C-0139)
27) **Great Cat Adventures** (Amarillo, TX #74-C-0627 [license revoked 3/2/12])[9]
28) **Hoffman, Bill** (d/b/a Animal Rentals) (Chicago, IL #33-C-0024)
29) **Jungle Island** (Miami, FL #58-C-0414)
30) **King Kong Zoological Park** Inc. (Murphy, NC #55-C-0222)
31) **Maple Lane Wildlife Farm** (Topeka, IN #32-C-0178)
32) **Marcan, Josip** (Ponce de Leon, FL #58-C-0270)
33) **McCarthy's Wildlife Sanctuary** (West Palm Beach, FL #58-C-0423)
34) **McMillan, Brian** (d/b/a Hollywood Animals &Walking With Lions, Los Angeles, CA #93-C-0297)
35) **Miller, Jarod** (d/b/a Wild Encounters Productions) (North Boston, NY #21-C-0219)
36) **Mogensen, Karl** (d/b/a Natural Bridge Zoo) (Natural Bridge, VA #52-C-0035)
37) **Monkeys and More Exotic Animal Rescue** (Chicago, IL #33-C-0213)
38) **Monkeys on the Midway** (Doniphan, MO #43-C-0285)
39) **Noah's Ark Animal Rehabilitation Center** (Locust Grove, GA #57-C-0037)
40) **Oswald's Bear Ranch** (Newberry, MI #34-C-0123)
41) **Premier Animal Attractions** (Ortonville, MI #34-C-0131)
42) **Reinhardt, Donald** (d/b/a Exotic Animal Adventures) (King George, VA #52-C-0148)
43) **Rosaire-Zoppe Chimpanzees** (aka Big Cat Habitat, Sarasota, FL #58-C-0936)
44) **Safari West** (Santa Rosa, CA #93-C-0579)
45) **Safari Wilderness** (Lakeland, FL #58-C-0952)
46) **Savanahland Educational Park** (Pleasant Hill, MO #43-C-0208)
47) **Sawmiller, Robert** (d/b/a Wildlife on Wheels/Awesome Animal Attractions) (Wapakoneta, OH #31-C-0083)
48) **Schoebel, Mark** d/b/a Timbavati Wildlife Park fka Storybook Gardens (Wisconsin Dells, WI #35-B-0033)
49) **St. Augustine Wildlife Reserve** aka Soul of the Wolf (Saint Augustine, FL #58-C-0688)
50) **Staples, Brian** (d/b/a Staples Safari Zoo) (Deer Park, WA #91-C-0060)
51) **Stapps Circle S Ranch** (Greensburg, IN #32-C-0179)
52) **Stark, Tim and Melisa** (d/b/a Wildlife in Need) (Charlestown, IN #32-C-0204)
53) **Steeples Bears** (Gun Barrel City, TX #74-C-0440)
54) **Stump Hill Farm** (Massillon, OH #31-C-0050)

Mann, *Riverfest's Traveling White Tiger Discovery Exhibit Has New Owner Since Its Chicago Shutdown*, The Wichita Eagle (May 30, 2012), http://www.kansas.com/2012/05/30/2354012/riverfests-traveling-white-tiger.html; USDA Inspection Report for Todd's Pony & Hay Rides (April 22, 2012).

[9] *In re: Jamie Michelle Palazzo*, AWA Docket No. 11-0023, April 7, 2011, Decision and Order.

55) **Suncoast Primate Sanctuary** (Palm Harbor, FL #58-C-0910)
56) **Tanganyika Wildlife Park** (Goddard, KS #48-C-0156)
57) **Tiger World Inc.** (Rockwell, NC #55-C-0225)
58) **Tigers for Tomorrow** (Attalla, AL #64-C-0187)
59) **Tiger Safari** (Tuttle, OK #73-C-0122)
60) **Valbuena Chimps** (Lakeland, FL #58-C-0300)
61) **Walk on the Wild Side** (Canby, OR #92-C-0159)
62) **Wallach, Larry** (East Rockway, NY #21-C-0069)
63) **Welch, Pamela** (Amagon, AR #71-C-0171)
64) **West Coast Game Park** (Bandon, OR #92-C-0013)
65) **West Virginia Zoo aka Hovatter's Wildlife Zoo** (Kingwood, WV #54-C-0119)
66) **Wild Animal Experience** (Chittenango, NY #21-C-0325)
67) **Wild Bill's Sanctuary** (Porter, OK #73-B-1842)
68) **Wolves Woods and Wildlife** (Lakeville, MN #41-C-0215)
69) **Woody's Menagerie** (Mulberry Grove, IL #33-C-0218)
70) **Yellowstone Bear World** (Rexburg, ID #82-C-0042)
71) **Yost, Sidney** (d/b/a Amazing Animal Productions) (San Bernardino, CA #93-C-0590)
72) **Zoological Wildlife Conservation Center** (Rainier, OR #92-B-0248)
73) **Zoological Wildlife Foundation** (Miami, FL #58-B-0306)
74) **Zootastic of Lake Norman** (Troutman, NC #55-C-0243)
75) **ZooWorld** (Panama City Beach, FL #58-C-0460)

In addition to these dozens of exhibitors, it was recently reported that the owners of Promised Land Zoo (#43-C-0245) are planning an exotic baby animal park in Branson, Missouri, which will apparently open in 2013 and provide the public opportunity for contact with infant big cats and nonhuman primates. *See* http://bransontrilakesnews.com/news-free/article-3f01ef58-9950-11e1-9c27-001a4bcf887a.html. Similarly, several unlicensed individuals frequently exhibit big cats, bears, and nonhuman primates (often sourced from licensees) on television shows where unlicensed and untrained members of the public are allowed to handle these dangerous wild animals. *See, e.g.*, Dave Salmoni and David Mizejewski, Appendix A.

This long list of exhibitors that allow public contact with dangerous animals shows that this is not an isolated problem, but rather a lucrative commercial trend[10] that is clearly within

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[10] *See, e.g.*, Celeste Gracey, *Three New Cougar Cubs Come to the Cougar Mountain Zoo*, Seattle PI (July 8, 2011) (reporting that Cougar Mountain Zoo charges "about $500" for "20 minutes of play time"), *at* http://www.seattlepi.com/local/sound/article/Three-new-cougar-cubs-come-to-the-Cougar-Mountain-1458852.php; Fox News, *In Florida, Who Needs Alligators When You Can Swim With Tiger Cubs*? (Oct. 9, 2012) (reporting that at Dade City Wild Things "A customer signs a general release, and for $200 he can frolic for 30 minutes" with a tiger cub), *at* http://www.foxnews.com/us/2012/10/09/in-florida-who-needs-alligators-when-can-swim-with-tiger-cubs/; Ron Sylvester, *MGM Lions – and New Cubs – Showing Off Their Henderson Home*, Las Vegas Sun (Dec. 26, 2012) (reporting that Keith Evans "offers personal time with the cubs for $200 for two people for five minutes"), *available at* http://www.lasvegassun.com/news/2012/dec/26/mgm-lions-and-new-cubs-display-ranch-henderson/. Similarly, the Chestatee Wildlife Preserve & Zoo offers tiger cub encounters for $250 per person. *See* http://chestateewildlife.com/. These businesses reportedly

APHIS' discretion, and duty, to regulate. While a few of these exhibitors have been cited for violations of the existing handling regulations (though rarely, as discussed below), without an explicit prohibition on public contact with big cats, bears, and nonhuman primates of any age,[11] these animals will continue to suffer the negative welfare impacts discussed in this petition, the public's health and safety will continue to be put at risk, and consumer confidence in USDA licensing will decline.

IV. Legal Background and Authority to Amend Regulations

Congress enacted the Animal Welfare Act in order "to insure that animals intended for exhibition purposes or for use as pets are provided humane care and treatment." 7 U.S.C. § 2131(1); Pub. L. No. 91-579. The AWA not only protects animals in exhibition, but also the "consumers" of this industry, such as patrons visiting exhibition facilities. *See, e.g., Animal Legal Defense Fund, Inc. v. Glickman*, 154 F.3d 426 (D.C.Cir. 1998) (finding that Plaintiff who viewed primates in inhumane conditions at an exhibition facility was within the zone of interests protected under the AWA).

The AWA requires all exhibitors[12] and dealers[13] to obtain a license from the Secretary of Agriculture, and provides that "no such license shall be issued until the dealer or exhibitor shall have demonstrated that his facilities comply with the standards promulgated by the Secretary..." 7 U.S.C. § 2133; 9 C.F.R. § 2.1(a)(1). Compliance is demonstrated and verified through a preliminary inspection of new licensees; however, renewal applicants simply

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draw visitors from around the world. *See*, e.g., JuJu Kim, *Swim With a Tiger Cub at One Florida Zoo*, Time (Oct. 10, 2012), *at* http://newsfeed.time.com/2012/10/10/swim-with-a-tiger-cub-at-one-florida-zoo/.

[11] Note that while public handling of big cats is currently the most popular, numerous licensees offer interactive opportunities with nonhuman primates and bears (*see* Appendix A). Further, it is imperative that APHIS prohibit public handling of all of these species, as a prohibition solely on big cats, for example, would likely spur the unmanaged and irresponsible breeding of nonhuman primates and bears to meet the demand for public contact exhibition with these popular species.

[12] 7 U.S.C. § 2132(h) ("The term 'exhibitor' means 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, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary;").

[13] 7 U.S.C. § 2132(f) ("The term 'dealer' means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include-- (i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than $500 gross income from the sale of other animals during any calendar year.").

demonstrate compliance by certifying that "to the best of the applicant's knowledge and belief, he or she is in compliance with the regulations and standards and agrees to continue to comply with the regulations and standards." 9 C.F.R. §§ 2.2(b), 2.3(b). While APHIS periodically inspects licensed facilities to check for AWA violations (7 U.S.C. § 2147; 9 C.F.R. § 2.126), enforcement of the AWA is a difficult task given the large number of facilities that each APHIS inspector is responsible for overseeing.[14]

Section 2143 of the AWA outlines the activities for which the Secretary shall promulgate regulations; in particular, Congress has directed that the agency must adopt standards "to govern the humane handling...of animals by...exhibitors" and that such standards must include minimum requirements "for handling, housing, feeding, water, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals..." 7 U.S.C. § 2143(a)(1),(2). Further, "[t]he Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter." 7 U.S.C. § 2151.

Pursuant to this broad statutory authority, APHIS has adopted a performance standard regarding the handling of animals, which requires that handling of any animal must be done humanely and with minimal risk of harm to the public, that young animals not be exposed to excessive handling, and that certain dangerous animals must be under the "direct control" of an animal handler during public exhibition:

> (a) All licensees who maintain wild or exotic animals[15] must demonstrate adequate experience and knowledge of the species they maintain.

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[14] Unfortunately, APHIS often relicenses dealers and exhibitors despite a long history of non-compliance, including pages of repeat violations reported immediately before approval of the license renewal application. HSUS is deeply concerned that such relicensing of noncompliant facilities and individuals signals to the regulated community that violations of the AWA are tolerated. Two recent audit reports detail the inadequacies of APHIS enforcement. *See* U.S. Department of Agriculture Office of Inspector General, *Controls Over APHIS Licensing of Animal Exhibitors*, Audit Report 33601-10-Ch (June 2010), *available* at http://www.APHIS.gov/oig/webdocs/33601-10-CH.pdf; U.S. Department of Agriculture Office of Inspector General, *Animal and Plant Health Inspection Service Animal Care Program Inspections of Problematic Dealers*, Audit Report 33002-4-SF (May 2010), *available at* http://www.APHIS.gov/oig/webdocs/33002-4-SF.pdf.

[15] APHIS regulations define "wild animal" to mean "any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions...." 9 C.F.R. § 1.1. An "exotic animal" is defined as "any animal not identified in the definition of 'animal' provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad." *Id.* The term "animal" means "any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet...." *Id.*

(b)(1) *Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.*

(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals. (ii) Deprivation of food or water shall not be used to train, work, or otherwise handle animals; Provided, however, That the short-term withholding of food or water from animals by exhibitors is allowed by these regulations as long as each of the animals affected receives its full dietary and nutrition requirements each day.

(c)(1) *During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.*

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) *Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.*

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

(d)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) *During public exhibition, dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the direct control and supervision of a knowledgeable and experienced animal handler.*

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

(e) When climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. An animal may never be subjected to any combination of temperature, humidity, and time that is detrimental to the animal's health or well-being, taking into consideration such factors as the animal's age, species, breed, overall health status, and acclimation.

9 C.F.R. § 2.131 (emphasis added).

In 1989, when APHIS proposed these handling regulations, the agency expressly stated that "exhibitors do not have a right to allow contact between the public and dangerous animals." 54 Fed. Reg. 10,835, 10,880 (Mar. 15, 1989) (emphasis added). However, the regulations do not explicitly prohibit such contact, instead adopting a performance standard layered with a patchwork of agency guidance documents that are vague, entirely subjective, and do not clearly inform licensees, inspectors, or the public which activities are prohibited.

The regulations are most confusing as applied to big cats. Since lions and tigers are explicitly mentioned as examples of dangerous animals in Section 2.131(d)(3), "during public exhibition" such big cats must be "under the direct control and supervision of a knowledgeable and experienced animal handler." 9 C.F.R. § 2.131(d)(3). In addition to being under the "direct control" of the handler, big cats (as with all other animals) "must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public." *Id* at § 2.131(c)(1). Thus, licensees, inspectors, and the public are left to their own subjective determinations of whether a big cat is indeed under a hander's "direct control" and what constitutes "sufficient distance and/or barriers" for an individual big cat. *See Antle v. Johanns*, 2007 WL 5209982 (D.S.C. 2007), *aff'd per curiam*, 264 F. App'x 271 (4th Cir. 2008) (upholding USDA decision that found a violation of 9 C.F.R. § 2.131 when persons who are to be photographed with an adult big cat are allowed to stand behind the cat without any barrier between the cat and the persons being photographed).

A hodgepodge of agency guidance further complicates this subjective standard and creates confusion for determining when public contact with a particular big cat is allowed. Several agency documents suggest that APHIS generally interprets this performance standard as being violated when the public handles a big cat under the age of 8 weeks or over the age of 12 weeks (hereinafter referred to as the "8-12 week policy").

For example, licensees who intend to exhibit potentially dangerous animals should receive a copy of APHIS' "handling potentially dangerous animals" letter, which states that "direct public contact with juvenile and adult felines (e.g., lions, tigers, jaguars, leopards, cougars) does not conform to the handling regulations, because it cannot reasonably be conducted without a significant risk of harm to the animal or the public." *See* http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//9.7.14%20Handling%20of%20Dangerous%20Animals%20Letter.pdf. The letter defines juvenile and adult large felines as "over 3 months of age." *Id.*[16] Similarly, a recent opinion from an administrative

[16] The APHIS Exhibitor Inspection Guide Section 8.12.8-9 also stated that "direct public contact with juvenile (over 3 months of age) and adult felines such as lions, tigers, jaguars, leopards, and cougars

law judge confirms that the performance standard may be violated when the public is allowed to come into contact with a big cat over 12 weeks. *See In re Jamie Michelle Palazzo, d/b/a Great Cat Adventures and James Lee Riggs*, AWA Docket No. 07-0207 Appeals Decision and Order (May 10, 2010). However, age alone is not enough to determine a violation of the handling regulations, which makes collecting enough evidence to prove a violation an extremely difficult task for inspectors.

The "handling potentially dangerous animals" letter also states that the "handling regulations do not appear to specifically prohibit direct public contact with infant animals, so long as it is not rough or excessive, and so long as there is minimal risk of harm to the animal and to the public." *See* http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//9.7.14%20Handling%20of%20Dangerous%20Animals%20Letter.pdf. In contrast, a USDA Fact Sheet, entitled *The Big Cat Questions and Answer: Commonly Asked Big Cat Questions*, provides that "Although we do not encourage public contact with cubs, it is possible for an exhibitor to exhibit cubs over approximately 8 weeks of age (i.e., when their immune systems have developed sufficiently to protect them from most communicable diseases), to the public, and still comply with all of the regulatory requirements." *See* http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/big_cat_q&a.pdf. *See also In re Craig A. Perry (d/b/a/ Perry's Wilderness Ranch & Zoo)*, AWA Docket No. 05-0026, 2012 WL 1563490 (March 29, 2012) ("Even cubs can harm the public").

Thus, with respect to big cats, it appears from this patchwork of documents that APHIS inspectors may use the ages of 8 weeks and 12 weeks as thresholds for further investigation of violations of the performance standard. Public contact with big cat cubs between 8-12 weeks is apparently allowed, while contact with infants under the age of 8 weeks may be prohibited to protect the animal and contact with juveniles and adults over 12 weeks may be prohibited to protect public safety. Some inspectors apparently inform licensed exhibitors of the 8-12 week policy (spurring frivolous breeding to maintain a supply of cubs within this age range, as discussed below), while some inspectors and exhibitors appear to

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may not be done safely under any conditions" and "does not conform to the handling regulations." Effective April 6, 2012, APHIS replaced the Exhibitor Inspection Guide with the Animal Care Inspection Guide "to reduce confusion and streamline information for our inspectors, regulated facilities, and stakeholders." http://www.aphis.usda.gov/publications/animal_welfare/2012/SA_AC_guide_replaced.pdf. The Animal Care Inspection Guide contains specific guidance on photo shoot inspections, petting zoo inspections, and traveling exhibit inspections. *See* http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//6.12%20Photo%20Shoot%20Inspecitons.pdf; http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//6.11%20Petting%20Zoo%20Inspection.pdf; http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//6.16%20Traveling%20Exhibitor%20Inspection.pdf. These new guidance documents do not contain the language regarding 3 month old big cat cubs that was previously contained in the Exhibitor Inspection Guide, creating additional confusion for APHIS inspectors and licensees.

be unaware of the 8-12 week policy and are left with their own subjective interpretations of "direct control" and "sufficient distance and/or barriers" when determining if public handling is compliant with AWA regulations.

Similarly, bears are explicitly recognized as a dangerous animal, and thus public exhibition of bears can only be done when the animal is under the "direct control" of the handler and there is "sufficient distance and/or barriers" between the animal and the public. 9 C.F.R. § 2.131. The term "direct control" is not defined in the regulations nor is there guidance on what constitutes "sufficient" distance or barriers between bears and the public. Further, the "handling potentially dangerous animals" letter does not include any discussion of public contact with infant or juvenile bears. Thus, young or immature bears may be handled provided that such handling is not "rough or excessive" (undefined terms that are also left to the subjective interpretation of the licensee, the inspector, and the public).

Current regulations regarding primate handling specifically allow public contact with "trained nonhuman primates" if the animals "are under the direct control and supervision of an experienced handler or trainer at all times during the contact." 9 CFR §§ 3.77 (g), 3.78(e), 3.79(d). There is no specific guidance regarding the age of primates who may be used for public contact exhibition and the term "trained nonhuman primate" is not defined. Thus, handling of all nonhuman primates must generally be consistent with the handling requirements for dangerous animals in Section 2.131(d)(3).

More than a decade ago, APHIS proposed a draft policy regarding the handling of potentially dangerous animals, recognizing that "[p]otentially dangerous animals can become aggressive during public handling or exhibition and can cause serious harm to themselves, their handlers, and members of the public." 65 Fed. Reg. 8313, 8320 (Feb. 18, 2000). The draft policy described what levels of knowledge and experience handlers, trainers, and other personnel should have, what handling techniques and procedures are unacceptable or inadvisable under the regulations because they could result in harm to the animals or the public, and what contingency plans should cover in the event that an animal becomes aggressive. *Id.* That policy did not explicitly prohibit direct public contact with dangerous wild animals such as lions, tigers, and bears (which, as discussed below, experts now agree is necessary); the proposal did, however, "note that macaques should not be used in situations where public contact is likely because they present a risk of serious and fatal disease transmission and because of other health and safety concerns..." *Id.*

APHIS never finalized the draft policy and in 2004 explicitly withdrew the draft. 69 Fed. Reg. 30601 (May 28, 2004). APHIS noted that the "draft policy statement was developed to provide guidance to exhibitors and other regulated persons on how to comply with the regulations regarding training and handling of potentially dangerous animals"; however,

the agency specifically stated that "We have determined that any clarification of the regulations should be accomplished through rulemaking..." *Id.* (emphasis added).

In addition to explicitly asserting that clarification of the handling regulations must be done through rulemaking, the agency has also previously supported a legislative prohibition on exhibition activities involving public contact with dangerous animals. *See* Letter from Acting Secretary Charles F. Conner to Representative Collin C. Peterson re H.R. 1947 (Dec. 18, 2007) (supporting a federal bill to prohibit public contact with big cats, commenting that "USDA agrees that such situations [i.e., those involving public contact] are inherently dangerous" and a "prohibition on direct contact between the public and big cats" is "appropriate.").

Further, the agency has previously recognized that AWA regulations should be amended when "advances have been made and new information has been developed with regard to the housing and care" of animals. 75 Fed. Reg. 79715 (Dec. 20, 2010). Since the handling regulations were promulgated in 1989, there have been significant advancements in the understanding of the animal welfare, conservation, and public safety threats caused by public contact exhibition, as discuss below.

Thus, there is clear statutory authority for APHIS to adopt handling regulations necessary to ensure the humane handling of exhibited animals; the current regulations are unacceptably vague, the agency has acknowledged in the past that further regulation of public handling of dangerous animals is needed, and there is clear scientific evidence to support an explicit prohibition of such activity, as discussed below.

V. *Current Handling Regulations Are Difficult to Enforce and Applied Inconsistently*

The current handling regulations, described above, include numerous subjective standards that are extremely difficult to enforce, especially given the mutability of exhibition. An APHIS inspector would have to be present at the exact moment, and for the duration of, the public interaction to determine whether a dangerous animal was under the "direct control" of an animal handler, if there is "sufficient distance and/or barriers" between an animal and the public, or if a young or immature animal is being handled "excessively." 9 C.F.R. § 2.131. Further, there is no standardized definition of what constitutes "direct control" (and given that dangerous animals such as large carnivores are far more powerful than any human handler, it is not readily apparent how such control could be humanely maintained when the animal is outside of the primary enclosure). Nor are there clear standards for what constitutes "sufficient distance and/or barriers"[17] between the public and animals or

[17] *The Big Cat Questions and Answer: Commonly Asked Big Cat Questions* document does provide that with respect to those species "[t]rained handlers, leashes, and stages, for example, are not

"excessive" handling of young animals. *Id.* Without regulatory definitions of these terms, licensees are not clearly on notice as to what activities are prohibited, and the agency is neglecting its statutory duty to provide enforceable minimum requirements for humane handling.

The 8-12 week policy for big cats raises particular enforcement concerns, as even when APHIS is present during public exhibition it is almost impossible for inspectors to determine if a cub being used on display is truly within the age range of 8-12 weeks, given the great variance (both intraspecific and interspecific) in body size. While knowing a cub is vulnerable because of its age is apparently not enough to cite for a violation of the handling regulations – as inspectors need evidence of adverse effects of handling to find a violation of the performance standard – some inspectors do appear to give significant weight to the age of the animal. *See, e.g.*, Inspection Report for Zootastic of Lake Norman, Inc. (May 18, 2011) (citing a violation of Section 2.131(c)(1) and noting that a 4.5 week old tiger cub "is too young to be in public contact as young cubs less than 6 weeks old do not have robust immune systems and are vulnerable to infection."). Thus, it is extremely difficult for a licensee (or inspector or member of the public) to know if public contact is allowed with a particular big cat and under what circumstances.

This difficulty in enforcement is demonstrated by the fact that licensees who routinely offer public contact with big cats, bears, and nonhuman primates are very rarely cited for violations of the performance standards in the handling regulations, despite abundant evidence of the negative animal welfare impacts from such activities.

For example, the GW Exotic Animal Park (#73-C-0139), which regularly offers members of the public the opportunity to interact and take photographs with big cats (*see* Appendix A), has only been cited for one handling violation since March 2010, and that citation was the result of a complaint submitted to USDA by a concerned citizen. *See* Inspection Report for GW Exotic Animal Park (Dec. 1, 2011) (citing a violation of 9 CFR § 2.131(c)(1) when a 3 month old tiger cub on a leash knocked down a small child). Thus, in 15 inspections of this facility over a two year period, the inspectors were unable to gather enough evidence to cite for handling violations that routinely occur at the facility (e.g., excessive handling of young animals and handling of dangerous animals with insufficient distance or barriers). Similarly, several other licensees that routinely offer public contact with big cats (e.g., T.I.G.E.R.S., #56-C-0116; Beth Corley, #73-C-0167; and Wild Acres Ranch, #31-C-0211) do not have any citations for violations of Section 2.131 related to big cats listed in the APHIS database (as of October 16, 2012).

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substitutes for sufficient distance and/or barriers." *See* http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/big_cat_q&a.pdf.

Additionally, facilities known to routinely allow for public contact with bears (e.g., Cherokee Bear Zoo, #55-C-0118; Yellowstone Bear World, #82-C-0042; and Robert Sawmiller, d/b/a Wildlife on Wheels & Awesome Animal Attractions, #31-C-0083) (*see* Appendix A) do not have any citations for violations of Section 2.131(c) (regarding excessive handling of young bear cubs) or 2.131(d) (regarding unsafe handling of dangerous animals) listed in the APHIS database (as of October 16, 2012).

Similarly, since there is no definition for what constitutes a "trained nonhuman primate" (and since such status, which itself is a dubious concept given the wild, unpredictable, and aggressive nature of nonhuman primates, would be exceedingly difficult for an inspector to verify during a particular instance of public contact), the primate handling regulations are also not clear enough to protect animal welfare or public safety. Indeed, a search of the APHIS database only revealed a total of two citations for use of an untrained primate (as of October 4, 2012). *See* Inspection Report for Tammy Thomson (#74-C-0880), August 31, 2012 (citing for violation of and noting that "[d]uring a presentation by the licensee... the public was allowed to go into the area of the traveling housing facility containing 9 lemurs and were seen to be touching some of the lemurs. A teenage girl was seen to reach into the enclosure, grab one of the animal's tail and pull it through the enclosure mesh. No experience handler or trainer was present or in any position to have direct control and supervision of this contact. Prior to the presentation by the licensee, one identifiable employee was in the area of the traveling housing with 2 juvenile (3 months old) lemurs who were unrestrained by any means. ... The employee picked up the 2 lemurs and handed them to one of the [visitors upon request]. The employee did not have any method of restraint or means of control for these animals while the girls were holding them and taking pictures."); Inspection Report for Zootastic of Lake Norman Inc. (#55-C-0243), May 18, 2011 (citing for violation of 9 CFR § 3.77(g) and noting that the licensee used a 1 year old vervet monkey for public contact photo shoots even though the monkey had not been tested for herpes B or tuberculosis and was not a trained performing animal). Multiple other facilities that are known to routinely offer public contact with primates in an excessive and unsafe manner have not been cited for violations of the general handling violations or the primate-specific handling regulations. For example, the DeYoung Family Zoo (#34-C-0141) and Blitzen & Co. (d/b/a Savanahland Educational Park, #43-C-0208) (*see* Appendix A) have no primate handling violations listed in the APHIS database.

Traveling menageries, which often feature public interactions or photographic opportunities with big cats, bears, or nonhuman primates, also raise heightened enforcement concerns. Different inspectors are often responsible for the different locations traveled to, and thus the inspector familiar with the animals at their home site may not be in the location to conduct an inspection on the road. Traveling menageries are not even required to submit itineraries of their future travel. *See* Animal Care Inspection Guide, *Traveling Exhibitor*, 6.6.14 (2012),

http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//6.16%20Traveling%20Exhibitor%20Inspection.pdf; 74 Fed. Reg. 50738 (Oct. 1, 2009) (proposed rule to require traveling exhibitors to submit itineraries to APHIS at least two days in advance).[18] Without being able to track big cats, bears, and nonhuman primates involved in these traveling menageries, it is exceedingly difficult for APHIS to follow up on potential violations of the handling regulations (as the impacts of inhumane or unsafe handling may not be felt or noticed until the animal has moved to another location).

These enforceability problems are exacerbated by the resource shortages that APHIS faces. APHIS has only about 120 Animal Care inspectors to perform inspections for more than 3,800 exhibitors at a wide variety of facilities that possess big cats, bears, and primates. *See* APHIS, About Animal Care, at http://www.aphis.usda.gov/animal_welfare/about_ac.shtml. Thus, it is imperative that APHIS regulations draw clear lines that licensees can follow, so that animal welfare and public safety are protected even in the absence of inspector presence. Such unambiguous standards would also reduce the administrative enforcement burden because less time would be spent trying to determine if there is a violation and because a clear rule is a bigger deterrent to inhumane activity.

As explained in depth below, there is simply no safe or humane way to allow for public handling of big cats, bears, or nonhuman primates of any age, and it is essential that APHIS explicitly prohibit such activity. The current performance standard relies on the judgment of licensees (including those with a history of noncompliance with the AWA), instead of empirical evidence regarding the negative impacts from public handling of big cats, bears, and nonhuman primates (such as unmanaged breeding that creates a surplus of animals; premature mother-infant separation to make young animals available for commercial use; young animals routinely exposed to excessive handling; and mature animals being disposed of to substandard facilities when they become too large to handle, living out the remainder of their lives in inhumane conditions that often pose a risk to public safety and create additional enforcement burdens for local, state, and federal agencies). The scope and scale of this problem is immense and there is clear statutory authority and scientific justification to uniformly prohibit such activity.

[18] After Petitioners originally filed this petition, but before this amended version was submitted, APHIS finalized this rule to require itineraries, effective January 30, 2013. 77 Fed. Reg. 76809 (Dec. 31, 2012).

VI. *Public Handling of Big Cats, Bears, and Nonhuman Primates Undermines Animal Welfare, Public Safety, and Conservation and Must Be Prohibited*

As evidenced in this petition and supported by experts, the lifetime of inhumane treatment that big cats, bears, and nonhuman primates experience when subjected to public handling is unjustifiable under the Animal Welfare Act. Indeed, the AWA requires APHIS to prohibit direct contact and unsafe close contact between these animals, regardless of their age, and individuals other than trained employees or veterinarians, because explicitly prohibiting such activity is a necessary minimum requirement for governing humane handling. *See* 7 U.S.C. § 2143(a). Further, such prohibition is necessary to protect public safety and consumer expectations and to promote the conservation of those species who are endangered.[19]

Infant big cats, bears, and nonhuman primates are irresponsibly bred to provide a supply of animals for commercial exhibition and are prematurely and forcibly separated from their mothers to be groomed for human handling. During public contact, infants are excessively handled and are put in danger of contracting diseases. Big cats, bears, and nonhuman primates used for public contact exhibition often spend significant time traveling, which is known to cause immense stress to large carnivores and other highly-cognitive animals. Dangerous animals are even subjected to abusive training and painful declawing or de-fanging procedures in a futile attempt to make them safe for public contact once they mature. When animals used in such public handling are no longer profitable, they are often disposed of to substandard facilities to make room for the next generation of infants, who are often more profitable. In addition to these well-documented animal welfare issues, public contact exhibition involving big cats, bears, or nonhuman primates of any age poses a risk to public safety, both during the actual contact and by creating a surplus of dangerous wild animals that are kept in backyards and inadequate facilities across the country. Further, by sanctioning public handling of these animals, consumers rightly lose confidence in USDA licensing.

This petition focuses on big cats, bears, and nonhuman primates, as such animals are most commonly used in public contact exhibition and because public handling of such animals (regardless of age) is contrary to the humane handling mandate of the AWA, undermines conservation efforts for numerous endangered species, and threatens the safety of the public. That many states have banned possession of these animals by unqualified individuals further supports the argument that USDA must take action to prohibit persons other than licensees and their trained employees or veterinarians from coming into direct physical contact or unsafe close contact with these dangerous animals. *See* Wash. Rev. Code

[19] The Endangered Species Act, which Congress enacted to promote the conservation of species threatened with extinction, recognizes that USDA has jurisdiction over the possession of animals in certain facilities and encourages federal agencies to work together to protect endangered species. *See* 16 U.S.C. § 1540(e), (h).

§ 16.30; Iowa Code Ann. § 717F.1; La. Admin. Code Title 76, Part V, § 115; Md. Code Ann., Crim. Law § 10-621. Further, states are beginning to recognize that public contact with big cats, bears, and nonhuman primates is inappropriate, and have begun to specifically prohibit such actions. *See, e.g.*, Miss. Code Title 49, Chap. 8 & Public Notice 3523.002 (prohibiting physical contact between inherently dangerous animals and the public at both permanent and temporary exhibitions); AZ Admin. Code R12-4-407 (prohibiting photographic opportunities involving public contact with restricted wildlife); Kan. Stat. Ann. 32-1306(d) ("a dangerous regulated animal shall not be allowed to come into physical contact with any person other than the person possessing the animals, the registered designated handler or a veterinarian...").

A. Unmanaged Breeding

In order to ensure a steady supply of profitable big cats, bears, and nonhuman primates, USDA licensees irresponsibly breed such animals without the resources or planning necessary for humane captive propagation. This frequent breeding has negative welfare impacts on the dams and infants and also undermines the conservation of endangered big cats, bears, and primates.

With respect to big cats, intensive breeding operations have emerged with an estimated several hundred cubs born each year. Dozens of licensed facilities (identified above and in Appendix A) are regularly advertising opportunities for the public to handle lion and tiger cubs in traveling mall exhibits, private menageries, or roadside zoos. Given big cat reproductive biology and that cubs are generally only eligible for approximately four weeks of handling (because of the 8-12 week policy), to meet this advertised supply these 33 breeding facilities would have to produce an estimated *200 cubs each year*, at minimum, for such public exhibition.[20] APHIS inspectors may be unaware that a number of these cubs exist, since they may be kept in areas that inspectors do not routinely inspect (such as the exhibitor's home or the homes of the exhibitor's employees) or may be born and transferred to another facility within months (meaning that annual inspections are too infrequent to monitor animal inventories).

Further, animal inventories reported by APHIS inspectors often rely on information provided by the licensee, which may be inaccurate, as the agency does not have a formal tracking system to calculate the full scope of this problem. For example, one licensee who

[20] If each of these 33 exhibitors had one cub available for public handling year round, given the 8-12 week policy that would mean that each exhibitor would need 12 cubs per year, which would equate to 396 cubs born per year to meet this demand. However, it is clear that exhibitors are using cubs for public handling for longer than 4 weeks, and some exhibitors are more prolific and consistent breeders than others. Similarly, some exhibitors may not have cubs available all year round, while some are known to have at least two cubs at a stationary facility and two cubs in a traveling exhibit all year. Based on this information, it is likely that a minimum of 200 cubs being born each year for public handling is a conservative estimate. *See also* Declaration of Dr. Ronald Tilson at ¶7 ("it is likely that well over 100 tiger cubs per year are born in the U.S. outside of the AZA Tiger SSP").

routinely offers public contact with big cats and bears (Joe Schreibvogel, #73-C-0139) recently publicly mocked the inaccuracies of USDA's inventories, claiming "[I] guess according to this inventory I could sell 35 more tigers on the black market...and no one would miss them, huh?" *See* Appendix B. *See also* Declaration of Carole Baskin at ¶3 ("it appears to be routine practice for USDA exhibitors to simply ask licensees for an inventory of their animals, as opposed to personally verifying these numbers"). Without knowing how many animals licensees possess it is extraordinarily difficult for the agency and the public to measure the exact scope of the problem of breeding for public contact exhibition (or subsequent disposition).

Primates and bears may be bred less frequently, given the species' biology – gestation periods and interbirth intervals are generally longer amongst primates and bears than big cats. *See, e.g.,* J. Wallis, *A Survey of Reproductive Parameters in the Free-Ranging Chimpanzees of Gombe National Park*, J. of Reproduction and Fertility Vol. 109, 297-307 (1997) (chimpanzee gestation averages 225.3 days); Joan Silk et al., *Gestation Length in Rhesus Macaques* (Macaca mulatta), Int'l. J. of Primatology Vol. 14(1) (1993) (average gestation period for this macaque monkey is 166.5 days); K.R. Foresman & J.C. Daniels Jr., *Plasma Progesterone Concentrations in Pregnant and Nonpregnant Black Bears* (Ursus americanus), J. of Reproduction and Fertility Vol. 68, 235-239 (1983) (black bear gestation period is approximately 225 days, including about 145-165 days of arrested development); Maria Pasitschniak-Arts, *Ursus arctos*, Mammalian Species No. 439, American Society of Mammalogists (1993) (grizzly bear gestation includes about 150 days of delayed embryo implantation and 42-56 days of fetal development); Linda L. Kerley et al., *Reproductive Parameters of Wild Female Amur (Siberian) Tigers* (Panthera tigris altaica), J. of Mammalogy Vol. 84(1), 288-298 (2003) (tiger gestation period is approximately 103 days); Craig Packer & Anne E. Pusey, *Male Takeovers and Female Reproductive Parameters: A Simulation of Oestrous Synchrony in Lions* (Panthera leo), Animal Behaviour Vol. 31, 334-340 (1983) (lion gestation period averages 110 days). Further, the lack of an 8-12 week policy for primates and bears means that licensees have less financial incentive to breed these species as frequently, since they can lawfully be used for public handling without any age restrictions (provided the performance standard is met). However, it is clear that numerous licensees are breeding primates and bears and making infants available for public interaction and photo shoots, and such breeding is done for commercial purposes with no regard to preservation of genetic integrity or planning for the lifetime care of these long-lived animals.

The Association of Zoos and Aquariums (AZA) is the only domestic organization that manages endangered species through Species Survival Plans (SSP, http://www.aza.org/species-survival-plan-program/) based on the best available science to maintain genetic integrity of captive colonies as a hedge against extinction. Conversely, according to Dr. Ronald Tilson, who coordinated the AZA Tiger SSP from 1987 to 2011 and has decades of experience in tiger husbandry:

> breeding practices by public contact exhibitors... seriously undermine legitimate *in-situ* species conservation efforts, jeopardize animal health and welfare issues, and sends false and misleading conservation messages to the general public. ... Roadside zoos and other unaccredited facilities breed cubs recklessly each year to supply the demand for public handling .... Private breeders typically ignore professionally recognized best practices like maintaining/increasing genetic integrity, allowing mothers to rear their own offspring, and insuring both mother and cubs are not subjected to stressful environments, such as constant inter-city transfers in inadequately designed vans/trucks. By frivolously breeding tigers, for example by not maintaining genetic diversity, the result is that these offspring most likely will have lower reproductive success, some will suffer from congenital defects such as hip dysplasia and cleft palates, and a few will become so neurotic that they will attack and maim or kill their cage mates.

Declaration of Dr. Tilson, at ¶6-7.

Similarly, Else Poulsen, a bear husbandry expert with over 25 years of experience working in captive wildlife management, recognizes the detrimental impacts of breeding for public contact exhibition. *See* Declaration of Else Poulsen, at ¶5 ("Breeding bears outside of legitimate captive propagation programs has serious implications for bear welfare and conservation. These practices result in a population of bears without genetic integrity... and a surplus of bears relative to the space available to provide adequate lifetime care. Often exhibitors engaged in the businesses of allowing public handling of bears do not employ professionally recognized best practices like keeping a studbook that is shared between facilities to encourage genetic diversity and accountability."). *See also* Association of Zoos and Aquariums, Primate Advisory Group, *Primate Pet Trade Position Statement, available at* http://www.lpzoo.org/chimp-ssp/AZA_statement.pdf ("Pet primates are unable to contribute genetically to those conservation programs in which they are needed due to their isolation from the managed population and also in many cases to serious deficits in their social skills related to their rearing and maintenance in isolation from others of their kind.").

As discussed in the following section, this frivolous commercial breeding is almost always associated with premature mother-infant separation, which has negative welfare impacts on both the dam and infant. Indeed, the premature separation of mothers and infants may decrease the interbirth interval for these species, increasing the frequency of breeding and inflicting unnecessary distress on the mother. Further, because many species of big cats, bears, and primates are nearing extinction in the wild, such unmanaged commercial breeding is even more egregious and stands in stark contrast to breeding by AZA-accredited facilities that preserve genetic integrity and ensure animal welfare. In order for APHIS to protect animal welfare, as required by the AWA, it must address irresponsible breeding by

licensees, which is a root cause of the welfare crisis seen in substandard facilities across the country.

B. Premature Mother-Infant Separation

While public interaction and photographic opportunities with mature big cats, bears, and nonhuman primates still does occur and is not explicitly prohibited by current regulations, exhibitors more frequently offer public contact with infant and juvenile animals. This is likely because the American public is quite enchanted with animal babies and, thus, there is more opportunity for commercial gain with such animals. *See, e.g.*, Stephen Jay Gould, *A Biological Homage to Mickey Mouse*, *available at* http://todd.jackman.villanova.edu/HumanEvol/HomageToMickey.pdf ("Many animals...possess some features also shared by human babies...we are drawn to them, we cultivate them as pets, we stop and admire them in the wild...features of human childhood elicit powerful emotional responses in us, even when they occur in other animals.")

In order to make infant big cats, bears, and nonhuman primates available for public handling, such infants must be separated from their dams prematurely and often forcibly. For example, one insider who formerly worked for a public contact exhibitor (and who submitted a complaint to USDA on Sept. 1, 2012), on three occasions in less than a year witnessed "infant cubs being pulled from their mothers while the cubs were actively nursing the same day they were born." *See also* Declaration of Else Poulsen at ¶6 ("Premature separation of mother and newborn bears is a common practice for public contact exhibitors, as hand-rearing cubs allows the public access to small bears that are easier to feed and handle."); Declaration of Dr. Tilson at ¶11 ("In many instances where substandard facilities separate cubs because of a claim that the mothers are not providing proper care, it may be that the birthing environment, including the presence of staff, contributed to the rejection by the mother."); Declaration of Carole Baskin at ¶5 ("Because young cubs are the most profitable for exhibitors, most are prematurely separated from their mothers."); Declaration of Dr. Henry M. Richardson, DVM at ¶7 ("The length of time that experts recognize as necessary for normal infant development varies depending on the species, but there is general consensus that in legitimate captive propagation programs the best practice is to avoid disturbing mothers and newborns (physically or even audibly) so that they can bond and establish a routine for proper physical and behavioral development. In contrast, exhibitors engaged in the business of breeding for public handling often prematurely and forcibly separate infants both to obtain young cubs for public contact and to encourage a dam to reproduce again more quickly.");

It is well established that mammals have extraordinary mother-infant relationships that are essential to the biological and social development of these species. *See* M. Elsbeth McPhee & Kathy Carlstead, *The Importance of Maintaining Natural Behaviors in Captive Mammals*, in Wild Mammals in Captivity (Debra Kleiman et al., eds), 303-313 (2010) ("In most mammals, the mother- infant relationship is critical to the future development of off

spring, affecting future defensive responses and reproductive behavior. A disturbed mother- infant relationship may deprive the young animal of specific stimulation essential for the development of normal emotional regulation, social interaction, and complex goal-directed behaviors, in particular, maternal and sexual behaviors."); N.R. Latham & G.J. Mason, *Maternal Deprivation and the Development of Stereotypic Behaviour*, Appl. Anim. Behav. Sci., Vol. 110(1-2), 84-108 (2008); T.H. Clutton-Brock & D. Lukas, *The Evolution of Social Philopatry and Dispersal in Female Mammals*, Molecular Ecology Col. 21(3), 472-492 (Feb. 2012); R.C. Newberry & J.C. Swanson, *Implications of Breaking Mother-Young Social Bonds*, Applied Animal Behaviour Science Vol. 110, 3-23 (2008) (maternal bonding between mammalian mother and young is mediated by hormones and neurotransmitters that facilitate attachment and maternal behavior). Mammalian mothers fiercely protect their young at least until they are weaned and self-sufficient; thus, licensees must use force, deception, or chemical immobilizers to separate these infants.

Weaning is normally a slow and gradual process, and the natural age of weaning for big cats, bears, and nonhuman primates ranges from several months to several years. *See, e.g.*, Birute Galdikas & James Wood, *Birth Spacing Patterns in Humans and Apes*, American J. of Physical Anthropology Vol. 83(2), 185-191 (Oct. 1990) (natural age of weaning for orangutans is about 8 years, about 5 years for chimpanzees); Mark Prescott et al., *Laboratory macaques: When to wean?*, Applied Animal Behaviour Science (in press, accepted Nov. 3, 2011) ("It is preferable for young macaques to remain with their mothers until they have become behaviourally independent. Minimum weaning age should therefore not normally be less than 10-14 months old..."); Paul Garber & Steven Leigh, *Ontogenetic Variation in Small-Bodied New World Primates: Implications for Patterns of Reproduction and Infant Care*, Folia Primatologica Vol. 68, 1-22 (1997) (natural age of weaning for New World primates ranges about 3-8 months); Sunquist, M. and F. (2002) *Wild Cats of The World*, The University of Chicago Press, Ltd., London (natural age of weaning for tigers is about 6 months); Sarah Haas et al, *Panthera leo*, Mammalian Species No. 762, 1-11 (July 15, 2005) (lion cubs naturally weaned by about 8 months); Kevin Seymour, *Panthera onca*, Mammalian Species No. 340, 1-9 (Oct. 26, 1989) (suckling continues until 5-6 months for jaguars); Paul Krausman & Susana Morales, *Acinonyx jubatus*, Mammalian Species No. 771, 1-6 (July 15, 2005) (cheetahs are weaned by 6 months); Maria Pasitschniak-Arts, *Ursus arctos*, Mammalian Species No. 439, 1-10 (April 23, 1993) (brown bears nurse for 1.5-2.5 years).

While dispersal patterns vary amongst these species and between the sexes, infant big cats, bears, and nonhuman primates naturally remain with their mothers for extended periods of time to develop essential survival skills. *See* Erlend Nilsen et al, *The Cost of Maturing Early in a Solitary Carnivore*, Oecologia Vol. 164, 943-948 (2010). Big cat cubs remain with their mothers for about two years, bears remain for 2-3 years, and primates remain with their mothers for nearly a decade prior to dispersing from their natal groups. *See id.*; Viktor Reinhardt, *Artificial Weaning of Old World Monkeys: Benefits and Costs*, J. of Applied

Animal Welfare Science Vol. 5(2), 151-156 (2002); Vratislav Mazak, *Panthera tigris*, Mammalian Species No. 152, 1-8 (May 8, 1981); Linda Sweanor et al., *Cougar Dispersal Patters, Metapopulation Dynamics, and Conservation*, Conservation Biology Vol. 14(3), 798-808 (June 2000); Serge Lariviere, *Ursus americanus*, Mammalian Species No. 647, 1-11 (Jan. 23, 2001); Rebecca Snyder et al., *Consequences of Early Rearing on Socialization and Social Competence of the Giant Panda, in* Giant Pandas: Biology, Veterinary Medicine and Management (David Wildt et al, eds) ("Carnivore offspring are invariably altricial, that is highly dependent on parental care (although no other carnivore is so much so as the giant panda). The period of dependence of many large carnivores is long, and the age of independence is greatest in ursids. . . carnivores reared in socially deprived settings also exhibit later deficiencies in maternal behavior") (internal citations omitted).

Therefore, when licensees prematurely separate (either immediately or after a few days or weeks) big cat, bear, or nonhuman primate infants from their dams, they deprive these animals of years of normal development and cause the infants to suffer from behavioral abnormalities, such as mental and reproductive disorders. These impacts are most well-studied with respect to nonhuman primates. *See* Karen Parker & Dario Maestripieri, *Identifying Key Features of Early Stressful Experiences that Produce Stress Vulnerability and Resilience in Primates*, Neuroscience and Biobehavioral Reviews Vol 35, 1466-1483 (2011) ("the stress of early parental loss, neglect, or abuse produces enhanced fear and anxiety, increased anhedonia [mood disorders], impaired cognition, abnormal brain neurochemistry and neurobiology, and alterations in baseline activity as well as stress reactivity of the hypothalamic-pituitary-adrenal (HPA) axis"); Mollie A. Bloomsmith et al., *Early Rearing Conditions and Captive Chimpanzee Behavior: Some Surprising Findings*, in NURSERY REARING OF NONHUMAN PRIMATES IN THE 21ST CENTURY, at 299 (Gene P. Sackett et al. eds., 2006) (finding that first-time captive chimpanzee mothers who were prematurely separated from their mothers when they were infants are approximately four times more likely to be incompetent mothers, as compared to chimpanzees who were reared by their mothers. In addition to long-term behavioral impacts that can result from maternal incompetence, initial competence is measured through the mother's ability and willingness to allow her infant to suckle and to carry and protect the infant); International Primatological Society, *Opposition to the Use of Nonhuman Primates in the Media* (2009), *at* http://www.internationalprimatologicalsociety.org/OppositionToTheUseOfNonhumanPrimatesInTheMedia.cfm (finding that "many nonhuman primates used as actors in movies and television and as photo props for commercials and greeting cards are often removed from their mothers shortly after birth and are denied opportunities for normal social and psychological development); G.A. Bradshaw et al., *Developmental Context Effects on Bicultural Post-Trauma Self Repair in Chimpanzees*, DEVELOPMENTAL PSYCHOLOGY vol. 45, no.5, 1376-1388 (2009). *See also* Association of Zoos and Aquariums, *White Paper: Apes in Media and Commercial Performances, at* http://www.aza.org/white-paper-apes-in-media-and-commercial-performances/ (recognizing that "apes destined to be performers or photographic props are typically removed from their mother shortly after birth and, thus,

are denied opportunities for normal social and psychological development. This has several commercial advantages to an owner. Infants removed in this manner will be appealing and remain submissive for handling by humans for several years. Mothers whose infants are removed will resume sexual cycling and produce another profitable infant quickly. But apes raised by humans in the absence of other members of their species will not normally acquire the skills to be socially and sexually competent as juveniles and adults. They may never readjust to life in a normal social group, and thus they are usually relegated to social and sexual isolation, which often leads to abnormal behaviors such as self-mutilation. For these reasons, it typically is not feasible to involve these individuals in conservation-based breeding programs.").

However, there is no reason to believe that mammalian carnivores such as big cats and bears would not similarly suffer from such developmental disorders. Indeed, studies have confirmed that these altricial species are also severely affected by maternal deprivation. *See* Debra Forthman & Roger Bakeman, *Environmental and Social Influences on Enclosure Use and Activity Patterns of Captive Sloth Bears*, Zoo Biology Vol. 11(6), 405-415 (1992) (hand reared bears showed significantly higher frequencies of self-directed and stereotyped behaviors than did mother-reared animals). *See also* Declaration of Dr. Tilson at ¶8-10 ("Prematurely removing a big cat cub from its mother is not condoned by the majority of animal care professionals because it may have significant negative developmental and welfare impacts for both the cub and its mother. ... Tiger experts with hundreds of years of experience in captive propagation agree that it is normally in a cub's best interest to stay with its mother until the species-typical age of dispersal (i.e., 2.5-3 years). ... The large body of evidence regarding maternal bonding versus infant separation in most every primate family studied is instructive in the big cat context -- for mammals, not being reared by a mother of the same species, and being in the company of other litter mates, is a handicap to developing normal adult behavior."); Declaration of Else Poulsen at ¶6-7 ("Premature separation of mother and newborn bears...has severe, long-term behavioral impacts for the cubs, and bear experts agree that hand-rearing cubs should be a last resort and only done if a mother is not willing and able to care for the cub(s) and no cohorts are available for peer rearing. Bear cubs have a genetic expectation to learn from their mothers... Without the opportunity to learn healthy bear behavior, cubs are more prone to stress, anxiety, and behavioral issues like entrenched stereotypes."); Declaration of Dr. Henry M. Richardson, DVM at ¶6-9 ("It is a basic tenet of mammalian biology that offspring are reared by their dams, including a relatively lengthy period of nursing and weaning and learning essential skills for adulthood. Premature separation of mothers and their offspring often results in poor health and behavioral abnormalities in the infants, some of which can persist throughout a hand-reared infant's lifetime. ... Infant big cats, bears, and primates who are prematurely separated from their mothers often experience long-term behavioral abnormalities, especially related to their own reproductive behavior. These impacts are very well established with regards to primates, and that body of evidence is largely applicable to big cats and bears as well. Indeed, big cat cubs and especially bear cubs are

known to be very dependent on their dams to learn species-typical adult behaviors."); Declaration of Carole Baskin at ¶5 ("Big Cat Rescue is home to one tiger who was separated from his mother soon after birth and still sucks on his paws 17 years later. Abnormal suckling behavior is common in hand-reared cats and is likely a coping mechanism for maternal deprivation. At least two other adult exotic cats at Big Cat Rescue who were hand-reared display similar abnormal behavior.").

Thus, it is not surprising that the scientifically-based and peer-reviewed care manuals that AZA-accredited facilities follow for certain species explicitly prohibit premature mother-infant separation and advise that mothers be given the opportunity to rear their offspring. For example, the AZA Polar Bear Care Manual (*available at* http://www.aza.org/uploadedFiles/Animal_Care_and_Management/Husbandry,_Health,_and_Welfare/Husbandry_and_Animal_Care/PolarBearCareManual.pdf) states: "it is always preferred to have a mother-raised polar bear cub" (at pg 41) and "letting [a polar bear mother] choose her normal routine, has increased the success of mother-rearing cubs" (at pg 14). The manual goes on to say that "there should be no need to handle a healthy looking polar bear cub that is being mother reared" and that "Rickets has been documented in a pair of hand-reared polar bears" (at pg 41). Recognizing the need to maintain a calm and quiet environment for female bears who have just given birth, the AZA manual recommends that "access to the area be limited to necessary personnel only, and only for short periods of time even for approved staff. The female and cubs should not be disturbed for a period of at least 72 hours before offering food" (at pg 51). For bears to be mother-reared is important – "over-familiarization with or over-reliance on human caretakers should be avoided in order to promote normal behavioral development and to increase the likelihood that they will be able to successfully reproduce and rear their own offspring as adults" (at pg 52).

In addition to these long-term[21] impacts on the infants' behavior, premature separation often leads to nutritional deficiencies and compromises the infants' immune system. Infant mammals gain protection from antibodies, proteins, and immune cells in breast milk. *See* G.R. Lubach et al., *Effects of Early Rearing Environment on Immune-Responses of Infant Rhesus Monkeys*, Brain, Behavior, and Immunity Vol. 9(1), 31-46 (1995) (rearing in the absence of the mother affects several aspects of cellular immunity – nursery-reared monkeys have significantly lower proportions of CD8 cells and lower natural killer cell activity and an attempt to rehabilitate these infants did not result in a recovery of normal immune responses, suggesting that abnormal early rearing has long-lasting effects on the immune system); Annette R. Jensen et al., *Development of Intestinal Immunoglobulin Absorption and Enzyme Activities in Neonatal Pigs is Diet Dependent*, J. of Nutrition Vol.

[21] Note that while some of these hand-reared infants may be able to be rehabilitated later in life, such rehabilitation is unlikely when animals are used for public contact exhibit until they mature and then relocate to substandard exhibition facilities or backyards without the experienced staff and opportunity for social interaction with conspecifics necessary for rehabilitation.

131(12), 3259-3265 (2001) ("In all mammals, there is a fundamental transition in the nutritional conditions at the time of birth. The fetus receives a continuous supply of parental nutrients via the placenta, whereas the newborn must adapt to an independent uptake of colostrum and milk nutrients for growth and development, but also passive immunity via the intestinal uptake of colostral immunoglobulins."); Declaration of Dr. Tilson at ¶8; Declaration of Dr. Richardson at ¶6.

It is well established that the immediate separation of mothers and infants (a practice employed by numerous exhibitors engaged in public handling with big cats, bears, and nonhuman primates) deprives the infants of essential nutrients that are exceedingly difficult to substitute. *See* The Merck Veterinary Manual, *Handrearing Mammals* (2011) ("milk composition data are not available for most species, and some of the published data are of dubious value. Lactose content of milk varies widely between different species..."). Bottle feeding carries additional risks as it can lead to aspiration pneumonia if done improperly. For example, as APHIS is aware, the GW Exotic Animal Park (#73-C-0139) had 23 tiger cubs die between April 2009 and May 2010, likely due to the facility's inability to properly prepare, store, or administer formula to cubs who had been prematurely separated from their dams. Thus, legitimate conservation entities engaged in captive propagation of big cats, bears, and nonhuman primates for noncommercial purposes only separate mothers and infants when necessary for the health of the infant or mother.

In addition to the copious evidence that premature separation negatively impacts the short- and long-term welfare of the infant, it is likely that mothers also suffer from such premature separation. *See, e.g.*, Katherine A. Cronin et al., *Behavioral Response of a Chimpanzee Mother Toward Her Dead Infant*, Am. J. of Primatology vol. 73, 415-421 (2011) ("The mother-offspring bond is arguably the strongest and most essential social bond among mammals. Mothers put themselves at great personal risk to protect their offspring, while the offspring's attachment to the mother forms a crucial template for future social interactions... By scrutinizing the behavioral pattern of mothers following the death of their infants, researchers are offered insight into the nature of the maternal attachment..."); Dora Biro et al., *Chimpanzee Mothers at Bossou, Guinea Carry the Mummified Remains of Their Dead Infants*, Current Biology Vol. 20(8), R351-R352 (2010) ("The infant's mother (Jire) carried the corpse, mummified in the weeks following death, for at least 27 days. She exhibited extensive care of the body, grooming it regularly, sharing her day- and night-nests with it, and showing distress whenever they became separated. The carrying of infants' corpses has been reported from a number of primate species, both in captivity and the wild – albeit usually lasting a few days only – suggesting a phylogenetic continuity for a behavior that is poignant testament to the close mother-infant bond..."). *See also* Declaration of Dr. Tilson at ¶8 ("Premature separation impacts the mother as well – public contact exhibitors may breed a female tiger as many as three times per year, which would never occur in the wild. Science-based knowledge of a tiger's reproductive natural history, common sense derived from years of professional

management of tigers in AZA-accredited zoos, and a nod to ethical and moral responsibilities to care and nurture captive tigers to the best of our abilities, all indicate that repetitive breeding – similar to what occurs in puppy mills – is detrimental to the mother."); Declaration of Dr. Richardson at ¶6 ("Premature separation can also negatively impact dams, who devote significant resources to gestation and birth – I have seen female cats emit a mournful call for weeks after being forcibly separated from their offspring and I have no doubt that females who lose their young experience a sense of loss.").

The International Primatological Society, the world's preeminent organization of primatologists working in the field and in laboratories, specifically objects to premature mother-infant separation:

> *Rearing and Weaning of Primates*
>
> To ensure normal psychological development, a complex and stimulating rearing environment must be provided. Allowing infants to grow with their mothers and in a social group is necessary for normal development. Infants should not be separated from their natal group at an early age but should remain with their mother until weaning age which varies greatly between species. Hand-rearing should only be carried out if the health of the infant (or mother) is in jeopardy.

International Primatological Society, International Guidelines for the Acquisition, Care and Breeding of Nonhuman Primates, p. 21 (2007) http://www.internationalprimatologicalsociety.org/docs/IPS_International_Guidelines_for_the_Acquisition_Care_and_Breeding_of_Nonhuman_Primates_Second_Edition_2007.pdf.

Experts raising big cats in captivity also recognize the sensitivities of new mothers and recommend that mothers and infants be left alone for four weeks after birth to ensure that the mother does not reject the cubs due to stress:

> Newborn cubs can be observed using a video if desired, but 24-hour direct observation is likely to be disturbing for the female and therefore detrimental to the well-being of the cubs. There should be no interference with a female and cubs in the early stages (0-28 days), as with many carnivores this has caused the death, or necessity for hand-rearing, of cubs. Cleaning should not take place in the cubbing area until the youngsters are moving out of the birth den on their own volition; again, such disturbance is likely to be detrimental. Staff cannot be certain that the mother will not harm the cubs until they are at least three weeks old.

M. Bush et al., *Birth, Growth and Rearing of Tiger Cubs*, in *Management and Conservation of Captive Tigers* (Ronald Tilson et al., eds) (1994).

Thus, ensuring that mother and infant big cats, bears, and nonhuman primates are not prematurely separated is a necessary component of minimum requirements to govern humane handling.

C. Excessive Handling of Young and Immature Animals

Although current regulations technically prohibit the "rough or excessive public handling" of young and immature animals, by not explicitly prohibiting all direct and unsafe close public contact with big cats, bears, and nonhuman primates of any age, the regulations actually facilitate handling that is harmful to these animals. 9 C.F.R. § 2.131. Young and immature big cats, bears, and nonhuman primates prematurely separated from their dams are particularly vulnerable and thus any public handling of such animals is by definition excessive. *See, e.g.*, Declaration of Ron Tilson at ¶11-12 ("Big cat cubs are born blind, fragile and completely dependent on its mother's care, warmth and milk to survive – in fact, in both wild tigers and captive tigers, neonatal mortality is highest (about 30%) during the first 30-90 days - which is why legitimate conservation propagation programs allow dams and their cubs to be left undisturbed after birth to allow the mother and offspring to bond and establish a feeding routine. Indeed, accredited zoos generally do not even put a mother and cubs on exhibit until the cubs are at least 12 weeks of age, due to the potential impacts of stress and/or accidents from exhibition. . . Big cats normally sleep up to 80% of every 24-hour day, but public handling severely interrupts this sleep cycle, causing exhaustion, anxiety, irritability, and associated physiological consequences that compromises their immune system."); Declaration of Else Poulsen at ¶7 ("Any public handling of a bear cub is by definition excessive and undermines animal welfare."); Ross Clubb & Georgia Jane Mason, *Natural Behavioural Biology as a Risk Factor in Carnivore Welfare: How Analysing Species Differences Could Help Zoos Improve Enclosures*, Applied Animal Behaviour Science Vol. 102(3-4), 303-328 (2007) (naturally wide-ranging lifestyles of carnivores predict relatively high captive infant mortality rates).

As discussed in the previous subsections, infant animals are highly desirable for exhibitors, and big cat cubs, bear cubs, and baby primates are frequently exposed to long periods of public handling in order to maximize profit. *See* Appendix A. Current regulations allow a licensee to make a subjective determination about whether public contact becomes "rough or excessive" such that it might be detrimental to the animal's welfare; however, any public handling of big cat, bear, or nonhuman primate infants poses a threat to the animal's welfare and thus must be prohibited. These infants are inherently stressed by being handled by multiple people, by crowding of the viewing public, and by comingling with other animals (for example, T.I.G.E.R.S. (#56-C-0116) is known to allow juvenile primates to bottle feed infant big cats – *see* http://www.anjanathechimp.com/).

Further, frequent public contact disrupts the animals' sleep cycle, which increases the stress from exhibition. In addition, thermoregulation is poorly developed in these infants and they need to be monitored carefully to prevent overheating or chilling – subjecting

these young animals to frequent public handling is contrary to this goal. For example, Dade City's Wild Things (#58-C-0883) offers the public the opportunity to swim with tiger cubs, advertising "30-minute swims Tuesdays through Saturdays between 9 a.m. and 5 p.m." *See* Tampa Bay Online, *Swim With Tigers for $200 at Dade City Zoo* (Aug. 26, 2011), *at* http://www2.tbo.com/news/offbeat/2011/aug/26/5/swim-with-tigers-for-200-at-dade-city-zoo-ar-253162/. Commercial exhibitors are unlikely to turn away paying customers to allow cubs to rest, meaning that a few cubs must meet this demand, a physically exhausting task for these infants. Yet unless an inspector were present all day to document such repetitive handling, it would be difficult to cite the exhibitor for a violation of the performance standard. Further, commercial exhibitors are likely to change their behavior if they know an APHIS inspector is present, making it even harder to enforce this regulation.

Therefore, to prevent rough and excessive handling of young and immature big cats, bears, and nonhuman primates, APHIS must set a minimum requirement prohibiting licensees from allowing members of the public to come into contact with such animals. Even if "the underlying intention for increased visitor-animal interaction is to promote the empathy and sense of connectedness needed to improve attitudes and behavior with respect to conservation...forced proximity to or contact with humans can be deleterious to animal well-being." Kathleen N. Morgan & Christ T. Tromborg, *Sources of Stress in Captivity*, Applied Animal Behaviour Science Vol. 102, 262-302 (2007).

D. Traveling Exhibition

While some licensees allow for public interaction and photographic opportunities with big cats, bears, and nonhuman primates at their permanent facilities, many travel around the country to offer public handling of these animals at shopping malls, state fairs, and other public venues. APHIS regulations provide that "socially dependent animals (e.g., sibling, dam, and other members of a family group) must be allowed visual and olfactory contact" in transport enclosures. 9 C.F.R. § 3.137(b). However, by not explicitly prohibiting public contact with big cats, bears, and nonhuman primates, APHIS actually facilitates violations of this transport regulation. As discussed above, these species are frequently prematurely separated from their mothers to be made available for public handling, and thus they frequently travel without animals they are socially dependent on.

It is exceedingly difficult for APHIS to track the transport of these animals, as traveling menageries are not even required to submit itineraries of their future travel. *See* Animal Care Inspection Guide, *Traveling Exhibitor*, 6.6.14 (2012), http://www.aphis.usda.gov/animal_welfare/2011_Inspection_Guide//6.16%20Traveling%20Exhibitor%20Inspection.pdf; 74 Fed. Reg. 50738 (Oct. 1, 2009) (proposed rule to require

traveling exhibitors to submit itineraries to APHIS at least two days in advance).[22] As discussed above, because traveling exhibitors frequently enter the jurisdiction of different inspectors, it is difficult for APHIS to prove a violation of the handling regulations with respect to traveling big cats, bears, or nonhuman primates. Further, by traveling to other states, licensees may be able to circumvent federal laws prohibiting interstate commerce in these animals and acquire additional animals from unlicensed facilities while on the road. *See* 16 U.S.C. §§ 3371(g), 3372(a)(2)(C),(e) (Captive Wildlife Safety Act, prohibiting interstate transport of big cats); 16 U.S.C. § 1538(a)(1)(E),(F) (Endangered Species Act, prohibiting interstate sale and commercial transport of listed species).

State health certificates obtained by HSUS and other sources (*see* Appendix C) document the prevalent interstate transport of young and immature animals without their dams (on whom they are socially dependent) for use for public exhibition – for example:

- A Sept. 2011 Oklahoma Certificate of Veterinary Inspection was issued to Beth Corley ((#73-C-0167, who works with the G.W. Exotic Animal Park, #73-C-0139, in Oklahoma) to bring the following animals to the Amarillo Tri State Fair (Amarillo, TX): 8 tigers (ranging in age from 2 wks – 24 wks), a spider monkey (3yrs), and 2 ringtail lemurs (ages 18 wks and 3 yrs);
- An Oct. 2011 Oklahoma Certificate of Veterinary Inspection was issued to Beth Corley to bring the following animals to Northgate Mall in Ohio: 8 tigers (ranging in age from 2wks-28wks) and 2 lemurs (ages 18 wks and 3 yrs);[23]
- An April 2011 Virginia Department of Agriculture Certificate of Veterinary Inspection was issued to Natural Bridge Zoo (Natural Bridge, VA, #52-C-0035) to transport two 2-day-old lemurs to the Catoctin Wildlife Preserve (Thurmont, MD) for purposes of exhibition;
- An October 2010 Missouri Department of Agriculture Certificate of Veterinary Inspection was issued to Wild Animal Safari (Strafford, MO) to transport a 1 week old liger to T.I.G.E.R.S. (#56-C-0116, Myrtle Beach, SC);

[22] After Petitioners originally filed this petition, but before this amended version was submitted, APHIS finalized this rule to require itineraries, effective January 30, 2013. 77 Fed. Reg. 76809 (Dec. 31, 2012).

[23] Note that these two health certificates were issued one month apart, yet it is unclear if they cover the same tigers and lemurs, as the reported ages of the animals have not all been adjusted upwards. State health certificates do not provide enough information for the public to adequately monitor the interstate movement of all big cats, bears, or nonhuman primates, thus underscoring the need for APHIS to take action to prohibit the activity for which these vulnerable animals are transported, i.e., public interaction and photo shoots.

- A July 2010 Florida Department of Agriculture Official Certificate of Veterinary Inspection was issued to Panther Ridge (Wellington, FL) to transport two 1-day-old jaguars to Tiger World (#55-C-0225, South Carolina);

- An April 2010 Florida Certificate of Veterinary Inspection was issued to Josip Marcan to transport to Gulf Coast Zoo (#64-C-0014, Gulf Shores, Alabama) 3 tigers at 2 wks of age (form specifically notes that animals are too young for Rabies vaccine, an issue discussed further below).

Several studies demonstrate that even short-term transportation procedures have a detrimental impact on the well-being of large carnivores. One study found that cortisol levels increased as much as 482 percent and remained elevated for nearly two weeks following brief transport periods. Other factors such as increased respiration rates and pacing were also noted. *See* DP Dembiec, RJ Snider, AJ Zanella, *The effects of transport stress on tiger physiology and behavior*, *Zoo Biol* 23:335–46 (2004). In traveling menageries such as those that allow for public contact, animals are repeatedly exposed to lengthy transport, confinement to cramped travel cages, and unfamiliar environments. *See also* Ros Clubb & Georgia Mason, *Captivity Effects on Wide-Ranging Carnivores*, Nature Vol. 425, 473 (Oct. 2, 2003) ("Among the carnivores, naturally wide-ranging species show the most evidence of stress and/or psychological dysfunction in captivity...husbandry of these species in captivity is therefore in need of improvement"); Declaration of Dr. Tilson at ¶12 ("Transporting animals for exhibition purposes poses additional and serious health concerns for big cats. Travel conditions and noise often cause stress, anxiety, and diarrhea in big cats, especially cubs, compromising their immune systems and making them more susceptible to disease. There is probably no other recognized event that is considered more dangerous for a big cat than being transferred from a place of familiarity to one of unknown familiarity. Big cat transfers are well recognized within the professional care fraternity as one of, if not the most, leading cause of premature death in tigers."); Declaration of Else Poulsen at ¶7 ("Bear cubs are often transported around the country to facilitate public contact exhibition, and this deprives cubs of the sleep, exercise, and routine that they need. Traveling and public handling are very stressful for a bear cub. For example, daily and seasonal sleep cycles are severely disrupted for travel or performance. Bears are diurnal and sleep twice a day, a schedule that is inconsistent with being awake during normal business hours for public contact exhibitors."); Steven J. Schapiro et al, *Physiological and Welfare Consequences of Transport, Relocation, and Acclimatization of Chimpanzees (*Pan troglodytes*)*, Applied Animal Behaviour Science Vol. 137, 183-193 (2012) (finding that "Transportation and relocation of chimpanzees resulted in statistically significant changes in a variety of hematological, clinical chemistry, and cell-mediated immune parameters that are likely to be indicators of changes in welfare." Some of these changes persisted for 8-12 weeks after arrival at a new location, and the study's authors suggested that "chimpanzees need to be provided with sufficient periods after relocation to properly acclimatize to their new conditions.").

Therefore, APHIS must prohibit public contact and premature mother-infant separation with respect to big cats, bears, and nonhuman primates in order to protect animal welfare.

E. Abusive Training, Declawing, and De-Fanging

The use of big cats, bears, and nonhuman primates for public contact also promotes practices that USDA otherwise condemns, such as abusive training, declawing, and de-fanging in a futile effort to make these inherently dangerous animals safe for public interaction. Unless public contact with big cats, bears, and nonhuman primates is explicitly prohibited, these practices are likely to continue, given the potential commercial gain from such exhibition.

APHIS regulations prohibit handling any animal in a manner that causes trauma, behavioral stress, physical harm, or unnecessary discomfort. 9 C.F.R. § 2.131(b)(1). However, by allowing dangerous animals to be subjected to public handling, APHIS actually facilitates violations of this regulation, as dangerous animals are often abusively trained in order to achieve a state of submission that reduces the animal's natural aggression and suppresses other species-typical behaviors. *See, e.g.*, Association of Zoos and Aquariums, *White Paper: Apes in Media and Commercial Performances, at* http://www.aza.org/white-paper-apes-in-media-and-commercial-performances/ (finding that "handlers of ape performers often must use food deprivation, physical abuse, continuous tranquilization, or even electric shock to maintain control. Additionally, the animals may be modified to reduce their ability to cause harm, for example by removing their teeth."); Declaration of Else Poulsen at ¶8 ("A hand-reared bear at a roadside zoo or traveling menagerie is far less likely to have exposure to other bears to learn social cues, which may result in abusive training techniques in an attempt to curb biting and scratching."). Similarly, big cats, bears, and nonhuman primates may be subjected to declawing and de-fanging in a misguided (and unlawful) attempt to make these animals "safe" for public contact even as they mature.

APHIS policy provides that "Declawing of wild and exotic carnivores and the removal or reduction of canine teeth in nonhuman primates and wild and exotic carnivores have been used in the past in an attempt to minimize dangers presented during human interaction with these species. These procedures are not innocuous and can cause ongoing pain, discomfort, or other pathological conditions in the animals. In addition, they do not prevent predatory behaviors, safeguard the general public, or prevent biting in nonhuman primates and carnivores. The declawing of any wild or exotic carnivore does not constitute appropriate veterinary care....The removal of the canine teeth of a nonhuman primate, or wild or exotic carnivore, unless for the immediate medical needs of the animal does not constitute appropriate veterinary care." Animal Care Policy Manual, Policy #3 (March 25, 2011), *available at* http://www.aphis.usda.gov/animal_welfare/policy.php?policy=3.

The American Veterinary Medical Association (AVMA) also "opposes declawing captive exotic and other wild indigenous cats for nonmedical reasons." *See* http://www.avma.org/issues/policy/animal_welfare/declawing_exotic.asp. The AVMA is similarly opposed to removal of canine teeth in captive nonhuman primates or exotic and wild (indigenous) carnivores, except when required for medical treatment or scientific research. *See* http://www.avma.org/issues/policy/animal_welfare/teeth_removal.asp.

For example, two licensed exhibitors who are known to allow for public interaction with big cats were recently cited for declawing tigers. Stump Hill Farm (#31-C-0050) was recently cited for declawing a juvenile tiger; Tiger Ridge Exotics (#31-C-0048) was also cited for declawing a 5-month-old tiger for non-medical reasons. Other licensees may circumvent these prohibitions by acquiring animals who are already defanged or declawed from unlicensed and unregulated private owners. Therefore, APHIS must explicitly prohibit public handling of big cats, bears, and nonhuman primates as a minimum requirement to disincentivize other behaviors that are prohibited or discouraged.

F. Disease Transfer to Exhibited Animals

When wild animals such as big cats, bears, and nonhuman primates are subjected to public handling (whether physical contact or unsafe close contact), they are put at risk of contracting diseases. Public contact exhibition exposes animals to people from diverse locations who may have sick companion animals at home, may be sick themselves, or may have come into contact with pathogens while walking through wildlife areas frequented by infected animals and can easily transmit pathogenic bacteria, viruses, and parasites to the exhibited animals. Big cats, bears, and nonhuman primates used in public handling exhibits are more likely to have increased stress levels (either because they are infants prematurely separated from their mothers and/or because they have recently been transported). Thus, these animals are predisposed to being infected. *See* Declaration of Dr. Richardson at ¶8 ("When infant big cats, bears, or primates are prematurely separated from their dams it results in a weakened immune system, in part because these infants often do not receive proper nutrition when deprived of their mothers' milk. These hand-reared animals have further-weakened immune systems when they are deprived of sufficient rest and exercise to make them available for public handling. When these young animals with compromised immunity are handled by the public, they are particularly susceptible to contracting diseases."); Declaration of Dr. Tilson at ¶9 ("Hand-reared cubs typically weigh less than mother-reared cubs, and often suffer digestive issues from formula-feeding and unhygienic environments, potentially resulting in infection. ... it appears that many substandard exhibitors allow members of the public to bottle-feed tiger cubs while holding them in an improper and unsafe position that increases chances of aspiration and death. Additionally, these public-feeders seldom have access to washing basins, do not wear proper clothing or hand-gloves, are not screened to see if they are sick,

coughing or exuding mucus from colds and viruses, thus creating an unhygienic environment that endangers the cub specifically.").

Often both humans and animals act as asymptomatic carriers of disease. This means both humans and animals can actively shed contagious organisms without ever showing clinical signs of illness, or ever even contracting the disease; this poses tremendous health risks to animals as well as risks to humans (as discussed further below). Many pathogenic organisms can adhere to hair, skin, clothing, shoes, and environmental surfaces and can remain infectious for very long periods of time. Many organisms are air-borne and diseases can be spread when pathogens are aerosolized such as occurs with sneezing or coughing. When humans and animals are in proximity the risk of disease transfer is increased.[24] Such contagious diseases may be transmitted by handlers, the public, the environment, and through direct or indirect contact with other animals.

For example, it is well established that chimpanzees are susceptible to human respiratory illnesses, which can be fatal to these animals and contracted through indirect contact. *See, e.g.*, Sophie Kondgen et al., *Pandemic Human Viruses Cause Decline of Endangered Great Apes*, Current Biology vol. 18, 260-264 (Feb. 26, 2008) (Chimps are susceptible to infection from human respiratory syncytial virus (RSV) and pneumonia, which are common causes of respiratory diseases in people, especially children, and are transmitted from humans in respiratory secretions and even sweat); William Mullen, *Human Virus Blamed for Death of Chimp at Lincoln Park Zoo*, Chicago Tribune (April 4, 2009) (9 yr old male chimp died from human metapneumovirus, which causes pneumonia, bronchitis and flulike illnesses); S.C. Nielson et al., *Probable Transmission of Coxsackie B3 Virus From Human to Chimpanzee*, J. Emerging Infectious Diseases Vol. 18(7), 1163-65 (July 2012) (analyzing the death of a chimpanzee from a common human pathogen, likely transmitted through "close contact" with a zoo employee since the public was separated from the chimpanzees by a 4-meter-high glass wall). *See also* Hartwig P. Huemer et al., *Fatal Infection of a Pet Monkey with Human Herpesvirus 1*, Emerging Infectious Diseases, Vol. 8, No. 6 (June 2002) (evidence that a human herpes virus (HHV-1) can cause fatalities in New World monkeys).

Additionally, big cats, bears, and some primate species are known to suffer from canine distemper (CDV), which could be transferred from a person with an infected dog at home or from someone who came into contact with excreta from infected wildlife, such as raccoons and skunks, who often frequent residential neighborhoods. *See, e.g.*, S. Cleaveland et al., *The conservation relevance of epidemiological research into carnivore viral diseases in the Serengeti*, Conservation Biology Vol. 21(3), 612-622 (2007); Max J. G. Appel et al., *Canine Distemper Epizootic in Lions, Tigers, and Leopards in North America*, J. Vet Diagn. Invest.

[24] Thus, for example, recognizing the potential for disease transmission, the International Union for Conservation of Nature and Natural Resources recommends a minimum distance of 33 feet between visitors and wild great apes (or 22 feet if tourists wear a surgical mask). Elizabeth J. Macfie & Elizabeth A. Williamson, *IUCN Guidelines for Best Practice in Great Ape Tourism*, Section 5.5.13 (2010), http://data.iucn.org/dbtw-wpd/edocs/ssc-op-038.pdf.

Vol. 6, 277-288 (1994); Environment News Service, *Two Wild Amur Tiger Deaths Clue to Distemper Outbreak* (October 3, 2011), *available at* http://www.ens-newswire.com/ens/oct2011/2011-10-03-02.html (reporting genetic confirmation of the fact that canine distemper is impacting wild tigers); Denise L. Myers et al., *Distemper: Not a New Disease in Lions and Tigers*, Clinical And Diagnostic Laboratory Immunology, p. 180–184 (Mar. 1997).

After rabies, CDV causes the second highest fatality rate in domestic dogs of any infectious disease and has been reported in all families of terrestrial carnivores. Sharon Deem et al. *Canine Distemper in Terrestrial Carnivores: A Review*, Journal of Zoo and Wildlife Medicine 31(4): 441–451 (2000) (during a 1992 canine distemper epidemic among 74 captive big cats, infection was confirmed in African lions, tigers, leopards, and jaguars with a 23 percent mortality rate). In addition to CDV being a highly contagious and prevalent deadly disease in dogs, there have been recent CDV infections reported among wild fox populations in South Carolina, Oregon and California, as well as confirmed or suspected cases in raccoons in South Carolina, Virginia, Washington, Missouri, Wisconsin, Florida, and Texas. *See* Associated Press, *Canine Distemper Outbreak Confirmed in Oregon Gray Foxes* (May 17, 2012), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2012/05/canine_distemper_outbreak_conf.html.

Big cats used in traveling shows are at greater risk of exposure to CDV. *See* Suzanne Kennedy-Stoskopf, *Emerging Viral Infections in Large Cats*, In Zoo and Wild Animal Medicine (ME Fowler & RE Miller, eds.), pp. 401-10 (1999); Liz Flynn, *White Tiger Christmas at McCarthy Wildlife Sanctuary*, WPTV (Dec. 21, 2011), http://www.wptv.com/dpp/news/region_c_palm_beach_county/west_palm_beach/a-white-tiger-christmas-at-mccarthy-wildlife-sanctuary (documenting the death of a tiger from canine distemper at the McCarthy Wildlife Sanctuary, #58-C-0423, a licensee known to allow for public contact with dangerous animals, as discussed further below).

CDV antibodies have also been found in polar bears in Canada, Grizzly bears in Alaska, and black bears in Florida. Marc R. L. Cattet et al., *Antibodies to Canine Distemper and Phocine Distemper Viruses in Polar Bears from the Canadian Arctic*; Journal of Wildlife Diseases, 40(2), pp. 338–342 (2004); B.B. Chomel et al., *Serological Survey of Selected Canine Viral Pathogens and Zoonoses in Grizzly Bears (*Ursus arctos horribilis*) and Black Bears (*Ursus americanus*) from Alaska*, Rev. sci. tech. Off. int. Epiz Vol. 17 (3), 756-766 (1998); Mike R. Dunbar et al., *Seroprevalence of Selected Disease Agents from Free-ranging Black Bears in Florida*, Journal of Wildlife Diseases, Vol. 34(3), 612-619 (1998).

CDV is also known to infect nonhuman primates: a 1989 CDV outbreak was reported among 22 Japanese monkeys; 12 of 20 CDV-infected Rhesus macaques died following an outbreak while under quarantine at a facility in China in 2008; and 4,250 of approximately 10,000 Rhesus monkeys who contracted CDV died in 2006 at a breeding facility in China. Zhaozeng Sun et al., *Natural infection with canine distemper virus in hand-feeding Rhesus*

monkeys in China, Veterinary Microbiology Vol. 141, 374–378 (2010); Wei Qiu et al., *Canine Distemper Outbreak in Rhesus Monkeys, China*, Emerging Infectious Diseases Vol. 17, No. 8 (August 2011).

Experts recognize the risk of disease these animals face when they are subjected to public handling. *See, e.g.*, Declaration of Dr. Richardson at ¶8 ("feline distemper virus can live on clothing for 18 hours and a member of the public with an infected housecat could easily transmit this disease while holding a tiger cub."); Declaration of Dr. Tilson; Declaration of Else Poulsen. For example, over twenty veterinarians have signed on to a statement of concern regarding this risk, finding that close human contact with young wild felids poses risks to the health of the animal, especially since "hand-reared felines often receive inadequate nutrition which further compromises their health and weakens their immunity. ... Placing these immunologically incompetent cubs in intense public settings significantly increases morbidity and mortality. ... [T]hese young animals are exceptionally susceptible to stress and disease... Therefore, there is no age appropriate for the use of wild felids in any setting where direct human contact is possible." Kim Haddad, *Risks Associated with Handling Juvenile Non-Domestic Felids, Captive Wild Animal Project Campaign (CWAPC) Statement of Concern* (emphasis added).

Therefore, APHIS must prohibit direct public contact and unsafe close public contact (e.g., allowing the public within 15 feet when there is no permanent barrier to protect the animal and the public) with big cats, bears, and nonhuman primates.

G. Risk of Physical Injury to Public During Handling

Public handling of big cats, bears, and nonhuman primates of any age poses a risk of physical injury to the public (e.g., visitors to roadside zoos, patrons of traveling exhibits at shopping malls and fairs, and untrained individuals present on the set of exhibition for media purposes). Further, such exhibition contributes to the epidemic of dangerous animals living in backyards and warehoused in inadequate facilities, as such animals are frequently disposed of once they are no longer profitable, posing a long-term risk to public safety.

While public contact with big cats over the age of 12 weeks is discouraged by APHIS, as discussed above, such contact frequently occurs (*see* Appendix A), putting visitors to USDA-licensed exhibitions at risk of bites, scratches, serious bodily injuries, and even death. In one extreme example, a Kansas teenager was killed while posing for a photograph with a tiger being restrained by its handler at an animal facility. C. Siemaszko, *Tiger kills Kansas teen: mauled while posing for pic*, New York Daily News (August 20, 2005). Although APHIS determined that such handling violated the regulatory requirement of sufficient distance and barriers, without a clear rule explicitly prohibiting physical contact and unsafe close contact (e.g., allowing the public to come within 15 feet of the animal without a permanent barrier to separate them) with dangerous animals such as big cats and bears another such incident is likely to occur, perhaps with a younger cat or bear who is not as

obviously dangerous. Further, as recently recognized by an administrative law judge, "even cubs can harm the public" through bites and scratches. *In re Craig A. Perry (d/b/a/ Perry's Wilderness Ranch & Zoo)*, AWA Docket No. 05-0026, 2012 WL 1563490 (March 29, 2012). Similarly, since public contact is currently allowed with "trained" primates of any age, APHIS regulations do not adequately protect the public from the risk of attack by these powerful animals. *See also* Declaration of Dr. Tilson at ¶14 ("Tiger teeth and claws are incredibly sharp from the moment they erupt, around seven weeks of age. Having hand-reared tigers myself (when truly necessary for the health and wellbeing of the infant), I know that young tigers are often uncomfortable with being handled, as observed by the animal squirming and trying to get away by biting, scratching, defecating, urinating, and squealing. Thus, allowing public contact with even young cubs poses a risk to public safety, especially for young children."); Declaration of Else Poulsen at ¶8 ("Public handling of even infant bear cubs is unsafe. Bear cubs bite naturally, and learn not to from parents or siblings who bite back. Further, bear claws do not retract and even a young cub can cause substantial injury to humans, especially young children.").

H. Zoonotic Disease Transfer to Public

Public handling of big cats, bears, and nonhuman primates also poses a risk of disease to the viewing public, whether visitors engage in direct physical contact or are allowed within an unsafe distance of the animal to facilitate activities such as photographic or feeding opportunities.

Animals subject to stress from transport, premature separation from their mothers, and/or frequent contact with humans are more likely to shed pathogens, increasing the risk of human illness from handling. *See* Kim Haddad, *Risks Associated with Handling Juvenile Non-Domestic Felids, Captive Wild Animal Project Campaign (CWAPC) Statement of Concern*. Bite and scratch wounds can result in bacterial infections, ringworm can be contracted by handling, and children may become sick with such illnesses as E. coli, Toxoplasmosis, Staphylococcus, and Streptococcus by putting their fingers in their mouths after petting the animals. *See* Declaration of Dr. Richardson at ¶10 ("The threats to public safety from handling of big cats, bears, and nonhuman primates of any age are significant. For example, when big cat cubs are permitted to be handled, bites or scratches that are likely to occur could cause infection. I have also seen cases where ringworm and parasites have been transmitted to humans from big cat cubs during the course of public handling. Bear cubs frequently have round worms, which human children are particularly susceptible to due to hand-to-mouth contact. Since bear claws are not retractable, these animals pose a public safety risk even at very young ages.").

The National Association of State Public Health Veterinarians (NASPHV) is an organization of local and state professionals who regularly consult with physicians, emergency rooms, legislators, local officials, schools, health departments, and the general public on preventing exposures to and controlling diseases that humans can get from

animals and animal products. NASPHV specifically recommends that "Because of their strength, unpredictability, venom, or the pathogens that they might carry, certain domestic, exotic, or wild animals should be prohibited in exhibit settings where a reasonable possibility of animal contact exists. Species of primary concern include nonhuman primates (e.g., monkeys and apes) and certain carnivores (e.g., lions, tigers, ocelots, wolves and wolf hybrids, and bears)." *See* The National Association of State Public Health Veterinarians, *Compendium of Measures to Prevent Disease Associated with Animals in Public Settings*, CDC Morbidity and Mortality Weekly Report, Vol. 60(4) (May 6, 2011) (emphasis added).

In support of this recommendation, NASPHV has found the following:

- Eliminating all risk from animal contacts is not possible.
- Multiple factors increase the probability of disease transmission at animal exhibits. Animals are more likely to shed pathogens because of stress induced by prolonged transportation, confinement, crowding, and increased handling. Commingling increases the probability that animals shedding pathogens will infect other animals. The prevalence of certain enteric pathogens is often higher in young animals, which are frequently used in petting zoos.
- Children are particularly at risk because of hand to mouth activity.
- Temporary animal exhibits are particularly vulnerable to design flaws that increase the risk of disease transmission. Such exhibits include animal displays or petting zoos added to attract visitors to zoos, festivals, and roadside attractions.
- Injuries associated with animals in public settings include bites, kicks, falls, scratches, stings, crushing of the hands or feet, and being pinned between the animal and a fixed object. These injuries have been associated with big cats (e.g., tigers), monkeys, and other domestic, wild, and zoo animals. Settings have included public stables, petting zoos, traveling photo opportunities, schools, children's parties, dog parks, and animal rides.
- Multiple rabies exposures have occurred with animals in public exhibition, requiring extensive public health investigation and medical follow-up. For example, people have received rabies post-exposure prophylaxis (PEP) after being exposed to rabid or potentially rabid animals, including bears. Substantial public health and medical care challenges associated with potential mass rabies exposures include difficulty in identifying and contacting persons potentially at risk, correctly assessing exposure

risks, and providing timely medical prophylaxis when indicated. Prompt assessment and treatment are critical to prevent this disease, which is usually fatal.[25]

- Multiple bacterial, viral, fungal, and parasitic infections have been associated with animal contact, and the infecting organisms are transmitted through various modes. Infections from animal bites are common and frequently require extensive treatment or hospitalization. Bacterial pathogens associated with animal bites include *Pasteurella* species, *Francisella tularensis*, *Staphylococcus* species, *Streptococcus* species, *Capnocytophaga canimorsus, Bartonella henselae* (cat-scratch disease), and *Streptobacillus moniliformis* (rat-bite fever). Certain monkey species (especially macaques) that are kept as pets or used in public exhibits can be infected with simian herpes B virus. Infected monkeys are often asymptomatic or have mild oral lesions yet human exposure through monkey bites or bodily fluids can result in fatal meningoencephalitis.

- Transmission of pox viruses in public settings also has been described. In the 1970s, after handling various species of infected exotic animals, a zoo attendant experienced an extensive papular skin rash from a cowpox-like virus.

The American Veterinary Medical Association has also recognized the public health risks and welfare impacts of keeping dangerous animals in substandard facilities. *See* AVMA Policy, Private Ownership of Wild Animals, http://www.avma.org/issues/policy/wild_animal_ownership.asp. Further, a recent study confirms that "an exotic animal may harbour a raft of potentially infective microbes and macroparasites making any animal a possible Trojan Horse of infection and infestation." Clifford Warwick et al., *A Review of Captive Exotic Animal-Linked Zoonoses*, J. of Env. Health Research Vol. 12(1) (2012). The authors of this study specifically found that "public *direct and indirect* contact with animals of uncertain origin and health state introduces a significant risk factor" and that "exotic pets are well established as sources of diverse pathogens, direct and indirect contact associated contamination, and significant and major sources of human disease." Therefore, the authors recommended that "Wherever possible direct human contact with zoo animals should be avoided." *Id. See also* E.C. Chen et al, *Cross-Species Transmission of a Novel Adenovirus Associated with a Fulminant Pneumonia Outbreak in a New World Monkey Colony*, PLoS Pathology Vol 7(7), e1002155- (July 2011)

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[25] Note that rabies vaccines are generally not approved for use in non-domestic animals (*see* http://www.cdc.gov/rabies/specific_groups/veterinarians/vaccines_marketed.html) and some states require unvaccinated animals be killed to test for rabies following a bite or scratch. *See, e.g.*, Don Lehman, *Judge Orders Lemurs Euthanized as Rabies Precaution*, The Post Star (Aug. 13, 2010), http://poststar.com/news/local/article_8fac67f6-a728-11df-bb76-001cc4c03286.html (euthanasia order issued after a lemur bit a child during public contact exhibition at the Ashville Game Farm). Therefore, putting these animals in a position where the public may be harmed increases the risk that the animal may have to be euthanized and is thus inconsistent with promoting the animals' welfare.

(identifying a new species of adenovirus transmitted from a captive titi monkey to an employee of the captive facility, who developed an acute respiratory illness and may have further transmitted the virus to a relative who had no contact with the monkeys).

The Association of Zoos and Aquariums also recognizes the risk of zoonotic disease transfer from animal handling, and specifically recommends that public contact with primates should not be allowed. AZA Accreditation Standards and Related Policies, at 56-57 (2012), *available* *at* http://www.aza.org/uploadedFiles/Accreditation/Accred%20Standards%20(with%20elephants)(1).pdf ("Responsible zoos should and do make reasonable attempts to limit the risk of the spread of disease from the animals in their care to their employees and to the general public. ... Obviously, animals that are ill, should not be used. ...Unless extensive testing has been performed for a variety of viral, parasitic, and bacterial diseases, all direct public contact with primates should be avoided. Public contact also places the primates at considerable risk of contracting diseases from humans.").

Given the well-established risks to human health associated with direct contact and unsafe close contact (e.g., allowing the public within 15 feet when there is no permanent barrier to protect the animal and the public) with big cats, bears, and nonhuman primates, it is imperative that APHIS prohibit such action to not only protect animal welfare and public safety, but also to protect consumers' expectations. When people visit a zoo or other exhibition that is licensed by the federal government, they expect that their safety, and the safety of their children in particular, will not be treated carelessly.

I. Risk of Injury to Public After Handling

In addition to the serious risk of physical injury to patrons visiting licensees' facilities that offer public handling, the general public is put at risk by the epidemic of big cats, bears, and nonhuman primates in backyards and substandard facilities (including many licensed by USDA) across the country. Neighbors, visitors, service personnel, and emergency first responders are all put in direct danger if these animals are not being kept in secure facilities.

This public safety risk was clearly illustrated by the devastating Zanesville, Ohio incident in October 2011, when nearly 50 animals, including 38 big cats, were freed by their suicidal owner (Terry Thompson) and then had to be killed by local deputies. *See* Greg Bishop & Timothy Williams, *Police Kill Dozens of Animals Freed on Ohio Reserve*, NY Times (Oct. 19, 2011). It is likely that some of the animals killed in the Zanesville release were sent to Mr. Thompson after being used for public contact exhibition. *See* Don Lehman, *Some Escaped Ohio Zoo Animals Used to Prowl in Greenwich*, The Post Star (Oct. 20, 2011) (reporting that Thompson received several big cats from Jeff Ash after state officials ordered Mr. Ash to relocate the animals following an incident where a tiger scratched a child). http://poststar.com/news/local/some-ohio-zoo-escape-animals-used-to-prowl-in-

greenwich/article_4f38c37c-fb5f-11e0-a6b0-001cc4c002e0.html.[26] *See also* Kyle Potter, *Las Vegas Police Kill Escaped Chimp, Capture Second*, Las Vegas Review Journal (July 12, 2012), http://www.lvrj.com/news/las-vegas-police-search-for-two-dangerous-chimpanzees-162236155.html (reporting on the inadequate facilities and caretakers for two chimpanzees who were formally used for photographic opportunities on the Vegas strip — these inadequacies allowed the chimpanzees to escape and one was fatally shot while running at large in the surrounding community); Association of Zoos and Aquariums, *White Paper: Apes in Media and Commercial Performances, at* http://www.aza.org/white-paper-apes-in-media-and-commercial-performances/ (noting that "when ape performers become too difficult to handle, they lose their commercial value and are sold to roadside menageries with inexpert handlers and often inhumane conditions").

Documents obtained by HSUS demonstrate the frequent interstate transport of big cats, bears, and primates from public contact exhibitors to substandard facilities. Following is a small sampling (compiled from public records received from a few states as well as news reports) of young big cats, bears, and nonhuman primates, who were likely used in public contact situations and were later discarded to other substandard facilities. *See* Appendix D.

- A Florida-based traveling zoo called The Zoo (operated by Robert Engesser) that sets up in parking lots offering public photo ops with lion and tiger cubs transferred six lion cubs to Rescue One in Ohio (#31-C-0135 – this license was cancelled Feb. 16, 2011, after the licensee was cited on Oct. 27, 2010 for AWA violations for enclosures that did not properly contain big cats; the facility recently relinquished custody of numerous animals after Ohio passed a law to regulate ownership of dangerous wild animals).

- Michigan-based Premier Animal Attractions also transferred a young tiger to Rescue One, as well as sent a young lion to Jungle Experience in New York (#21-C-0319), a facility that has been cited for AWA violations regarding the security of its facilities multiple times in the last several years and which o has been a subject of enforcement under state wildlife laws. *See* http://poststar.com/news/local/granville-zoo-owner-can-keep-her-big-cats-for-now/article_3cabc4aa-43b4-11e1-bfed-001871e3ce6c.html.

- G.W. Exotic Animal Park transferred at least 3 lion cubs, 7 tiger cubs, and a juvenile black bear to poorly run facilities across the country including:
  - The Hawthorn Corp. in Illinois (#33-C-0053)—a facility that has accumulated $272,500 in USDA penalties and has had its license suspended twice

[26] Terry Thompson also allowed members of the public to interact with young big cats on numerous occasions (including providing a lion cub for a photo shoot with model Heidi Klum), though he was curiously never licensed by USDA despite this evidence of exhibition. *See* USDA Complaint No. 08-094 (Feb. 13, 2008).

- Genesis Wildlife Center in Pennsylvania, which closed less than a year after receiving the tiger cubs
- The Amarillo Zoo in Texas (#74-C-0086), which did not have an exhibit for the animals and kept three lion cubs in a holding area for more than five months
- The Hillcrest Zoo in New Mexico (#85-C-0006), which has been repeatedly cited for a multitude of violations of the Animal Welfare Act

- Savannahland transferred an 8-month-old capuchin to an individual in Nevada named Bob Gillum, presumably to keep the monkey as a pet

- Mark Schoebel, a USDA class B dealer in Wisconsin who brokers animals to and from roadside zoos, dealers, and auctions across the country, has transferred numerous animals of post-photo op age to auction and roadside zoos and received two juvenile tigers and two juvenile lions from Wild Acres Ranch in Ohio

- Tiger World in North Carolina transferred a 14-week-old tiger and a 14-week-old lion to Out of Africa (#86-C-0095), a roadside zoo in Arizona

- T.I.G.E.R.S. in South Carolina transferred two 4-month-old tigers to Jay Owenhouse in Montana (#81-C-0031), who uses the animals in a magic act

- McCarthy's Wildlife Center, a pseudo-sanctuary in Florida, received two 14-month-old tigers and one liger from Dade City Wild Things because that facility was "overcrowded with too many animals." *See* Liz Flynn, *White Tiger Christmas at McCarthy Wildlife Sanctuary*, WPTV (Dec. 21, 2011), http://www.wptv.com/dpp/news/region_c_palm_beach_county/west_palm_beach/a-white-tiger-christmas-at-mccarthy-wildlife-sanctuary.

- Aloha Safari Zoo in North Carolina received an approximately 8-week-old bear and an 8-week-old tiger from unidentified facilities that previously used the animals for photo ops with the public

- Gregg Woody of Illinois (#33-C-0218) has taken in a large numbers of bears and big cats from facilities that offer photo ops as well as other exhibitors that are apparently discarding surplus animals (likely to make room for new babies). From April 2006 – January 2012, Woody received at least 45 bears, 19 African lions, 3 cougars, 1 leopard, and 4 ligers from at least nine facilities in five states. Seventeen of the 45 bears acquired by Woody and 11 of the 19 African lions came from a public contact exhibitor (GW Exotic Animal Foundation). The disparity between Woody's

acquisitions and his USDA inventory raises questions about whether these animals are slaughtered for the exotic meat market.

Legitimate sanctuaries cannot take in all of the unwanted animals that unmanaged breeding for public handling produces – these facilities are nearly filled to capacity and often struggle to maintain the financial support necessary to meet the growing demand for unwanted animals. In one case, 90 tigers were found dead and dozens more starved and barely alive – left behind by a cub handling exhibitor who operated a breeding facility in California. *See, e.g.*, Chris Dixon, *Last 39 Tigers Are Moved From Unsafe Rescue Center*, The New York Times (June 11, 2004); Barbara Whitaker, *Many Dead Tigers Are Found At Big Cat Retirement Home*, The New York Times (April 24, 2003) (John Weinhart of Tiger Rescue claimed to be running a retirement home for big cats once used by the entertainment industry. However, state officials found 30 dead animals on the property – most of them large cats like tigers – with 58 cubs dead in a freezer. Among the living, they found 11 infant cubs – estimated to be just 10 to 14 days old in a crawl space and two young tigers outside.). *See also* Declaration of Carole Baskin at ¶4 ("Due to financial constraints, Big Cat Rescue and other accredited sanctuaries routinely have to refuse to take in big cats who need sanctuary. As a result, unwanted big cats (many of whom were used in public contact exhibition until they grow too large) are often sent to substandard facilities with inadequate living conditions.") Consequently, these animals not only face the possibility of being sold to unscrupulous exhibitors or as "pets", they may also be killed for their parts, as discussed below.

Therefore, to protect the health and well-being of big cats, bears, and nonhuman primates used by licensed exhibitors, as required by the AWA, APHIS must adopt a minimum requirement explicitly prohibiting public contact with these species.

J. Conservation Impacts

Although conservation is not explicitly part of the APHIS mandate, it is important to note that the Endangered Species Act (ESA) encourages federal agencies to work together to protect endangered species and that many species of big cats, bears, and primates are protected under the ESA. *See* 16 U.S.C. § 1540(e), (h); 50 C.F.R. § 17.11 (list of protected species includes the tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncial*), cheetah (*Acinonyx jubatus*), jaguar (*Panthera onca*), Asiatic lion (*Panthera leo persica*), cougars (*Puma concolor*), black bear (*Ursus americanus*), grizzly bear (*Ursus arctos horribilis*), polar bear (*Ursus maritimus*), all apes, gibbons, and lemurs, and dozens of species of monkeys). Thus, breeding and use of these animals is of particular concern and must be managed to promote genetic integrity and conservation (and not be conducted frivolously for commercial purposes). *See* 16 U.S.C. § 1539(a)(1)(A) (allowing otherwise prohibited actions involved endangered species if such action will "enhance the propagation or survival of the affected species").

It is well established that allowing people to interact with dangerous animals increases the public's demand to keep these animals as pets. For example, one recent study found that people viewing an image of a chimpanzee standing next to a human were 30.3 percent more likely to agree that a chimpanzee was appealing as a pet than those viewing an image of a chimpanzee standing alone. Stephen R. Ross et al., *Specific Image Characteristics Influence Attitudes about Chimpanzee Conservation and Use as Pets*, PLoS One 6(7) (July 13, 2011). The authors of that study specifically noted that "One explanation for this effect is that viewers are led to believe that such direct associations between humans and chimpanzees are both common and safe. This reasoning is supported by the fact that chimpanzees displayed in zoo settings, where they are assumedly kept safely away from humans, resulted in a significantly lower proportion of respondents who found them appealing as pets." *Id.* There is no evidence that the conclusions of this study would not also apply to other endangered species. *See* Declaration of Dr. Tilson at ¶16-18 ("by allowing members of the public to handle tiger cubs, these businesses contribute to the demand for big cats as exotic pets,...Getting too close to any large predator, whether captive or wild, is risky and the public apparently is often not getting this important message.").

Thus, when the public is allowed to interact directly or indirectly with big cats, bears, or nonhuman primates, it increases the desire to keep such animals as pets. Given that the Animal Welfare Act specifically tasks APHIS with protecting animals transported in commerce, APHIS should be concerned with the growing trade of exotic pets, which is promoted through public contact exhibition.

Not only does public contact increase the demand for exotic pets, it also undermines conservation efforts by decreasing public awareness about the plight of endangered species, decreasing donations to conservation programs, and facilitating poaching and trafficking of wild animals. *See* Steve R. Ross et al., *Inappropriate Use and Portrayal of Chimpanzees*, Science vol. 319, pg. 1487 (2008); Stephen R. Ross et al., *Specific Image Characteristics Influence Attitudes about Chimpanzee Conservation and Use as Pets*, PLoS One 6(7) (July 13, 2011) (finding that people viewing a photograph of a chimpanzee with a human standing nearby were 35.5 percent more likely to consider wild populations to be stable and healthy compared to those seeing the same picture without a human); Kara Schroepfer et al., *Use of "Entertainment" Chimpanzees in Commercials Distorts Public Perception Regarding Their Conservation Status*, PLoS One 6(10) (Oct. 12. 2011) (finding that people who viewed images of people interacting with chimpanzees less frequently donated to conservation). Further, when the public is allowed to freely interact with dangerous wild animals at USDA-licensed facilities, it likely increases peoples' desire to interact with these animals in the wild, posing further risks to animal welfare and public safety. *See, e.g.*, Gillespie Comments on Docket No. FWS–R9– ES–2010–0086, *available at* http://esciencecommons.blogspot.com/2011/10/captive-chimps-up-for-endangered-status.html.

In addition to these very real problems of perception that undermine conservation efforts, it is possible that public contact exhibition is directly fueling international wildlife trade. For example, there are likely more than 5,000 captive tigers in the U.S., the vast majority of whom live outside of AZA-accredited zoos. *See* World Wildlife Fund, *Tigers Among Us: The Impact of Poorly Regulated Captive Tigers in the United States on Tigers in the Wild*, http://www.worldwildlife.org/species/finder/tigers/captive-tigers/WWFBinaryitem18371.pdf. There is no system for tracking these animals nationwide, and tigers are often worth more dead than alive; thus, there is ample opportunity for tigers, irresponsibly bred to supply cubs for public contact, to end up in the black market trade for traditional Asian medicine. *See* D.F. Williamson & L.A. Henry, *Paper Tigers: The Role of the U.S. Captive Tiger Population in the Trade in Tiger Parts*, TRAFFIC North America and World Wildlife Fund (2008). *See also* Declaration of Dr. Tilson at ¶16 ("because there is no oversight of all of the tigers being born in the U.S., public contact exhibitors could be supplying the illegal trade in tiger parts for traditional Asian medicine"); Declaration of Else Poulsen at ¶10 ("unprofitable bears are often sent to substandard facilities or killed (perhaps even contributing to the illegal trade in bear parts for traditional medicine).").

VII. Proposed Amendments to Handling Regulations

As demonstrated in this petition, it is essential that APHIS amend its animal handling regulations to explicitly prohibit licensees from allowing individuals other than trained employees or licensed veterinarians (and accompanying veterinary students) from coming into direct contact or unsafe close contact with big cats, bears, and nonhuman primates of any age. Refinement of the minimum requirements for humane handling is essential to protect animal welfare (as required by the AWA), to protect public safety, and to clearly inform the regulated community, inspectors, and the public of the scope of AWA regulations. Further, amending the handling regulations would eliminate incentives for unmanaged breeding operations that result in inhumane conditions and even death for many of the surplus unwanted animals who are no longer profitable. Such amendment would also be consistent with Executive Order 13563 (Jan. 18, 2011), which provides that regulations must be "accessible, consistent, written in plain language, and easy to understand."

As noted throughout this petition, public handling of big cats, bears, and nonhuman primates is uniformly objected to by welfare and conservation experts. *See, e.g.*, Declaration of Dr. Tilson; Declaration of Else Poulsen; Declaration of Dr. Richardson. Therefore, HSUS proposes that the agency adopt the following amendments (indicated in underlined red text):

§ 2.131 Handling of animals.

(a) (1) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.

(2) No licensee may allow any individual other than a trained full-time employee of the licensee or a licensed veterinarian (or accompanying veterinary student) to come into direct physical contact with any big cat (lion, tiger, leopard, jaguar, cheetah, cougar, or hybrid thereof), bear, or nonhuman primate, regardless of the age of the animal.

(b)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

(2)(i) Physical abuse shall not be used to train, work, or otherwise handle animals.

(ii) Deprivation of food or water shall not be used to train, work, or otherwise handle animals; Provided, however, That the short-term withholding of food or water from animals by exhibitors is allowed by these regulations as long as each of the animals affected receives its full dietary and nutrition requirements each day.

(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public. For big cats, bears, and nonhuman primates, "sufficient distance" is at least 15 feet from members of the public, unless there is a permanent barrier that prevents public contact or risk of contact.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being. Young or immature big cats, bears, and nonhuman primates shall not be exposed to any public handling and shall not be separated from their dams before the species-typical age of weaning unless a licensed veterinarian confirms in writing that such separation is medically necessary.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

(d)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) During public exhibition, dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

(e) When climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions. An animal may never be subjected to any combination of temperature, humidity, and time that is detrimental to the animal's health or well-being, taking into consideration such factors as the animal's age, species, breed, overall health status, and acclimation.

In addition to amending the general handling regulations as outlined above to prohibit direct contact and unsafe close contact with big cats, bears, and nonhuman primates of any age, the regulations specific to nonhuman primates will need to be amended as follows for consistency.

9 CFR § 3.77 (g) Public barriers. Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, that restricts physical contact between the public and the nonhuman primates. ~~Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be permitted physical contact with the public, as allowed under § 2.131, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.~~

9 CFR § 3.78 (e) Public barriers. Fixed public exhibits housing nonhuman primates, such as zoos, must have a barrier between the primary enclosure and the public at any time the public is present, in order to restrict physical contact between the public and the nonhuman primates. ~~Nonhuman primates~~

~~used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.~~

9 CFR § 3.79 (d) Public barriers. There must be a barrier between a mobile or traveling housing facility and the public at any time the public is present, in order to restrict physical contact between the nonhuman primates and the public. ~~Nonhuman primates used in traveling exhibits, trained animal acts, or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be allowed physical contact with the public, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.~~

VIII. Conclusion

Allowing public contact with big cats, bears, or nonhuman primates of any age causes severe negative welfare impacts, threatens public safety, undermines conservation efforts, and, therefore, decreases public confidence in USDA licensing. Infant big cats, bears, and nonhuman primates are irresponsibly bred to provide a supply of animals for commercial exhibition and are prematurely and forcibly separated from their mothers to be excessively handled (and often transported in interstate commerce for such use). During public contact, these animals and the visiting public are at risk of contracting disease and suffering serious injury or death. Dangerous animals are even subjected to abusive training and painful declawing or de-fanging procedures in a futile attempt to make them safe for public contact once they mature. When animals used in such public handling are no longer profitable, they are often disposed of to substandard facilities where the pose a continued risk to public safety. By sanctioning public handling of these animals at licensed facilities, consumers rightly lose confidence in USDA licensing.

Further, current APHIS regulations are extraordinarily difficult to enforce, inconsistently applied, and must be amended to ensure that licensees, inspectors, and the public are clearly informed of public handling rules. The AWA requires APHIS to provide minimum standards for animal welfare and, thus, the agency is statutorily required to explicitly prohibit public handling of these species by replacing the current performance-based standards with bright-line rules.

More than a decade after APHIS proposed a draft policy on the handling of potentially dangerous animals the agency has still failed to formally act on the issue. In officially withdrawing the draft policy in 2004, the agency stated that "clarification of the regulations [on training and handling of potentially dangerous animals] *should be accomplished through rulemaking.*" 69 Fed. Reg. 30601 (emphasis added). The instant petition requests that the agency initiate this necessary and long overdue rulemaking process to ensure that licensees, the public, and APHIS inspectors are clearly on notice of what the minimum humane handling standards are with respect to big cats, bears, and nonhuman primates.

APHIS plays an important role in addressing the nationwide crisis of dangerous wild animals living in unqualified facilities and backyards. The U.S. Fish and Wildlife Service is also beginning to address this problem, for example through the Captive Wildlife Safety Act, which generally prohibits interstate commerce in big cats for the pet trade. 16 U.S.C. §§ 3371(g), 3372(a)(2)(C),(e). However, USDA licensees are exempt from the Captive Wildlife Safety Act, and so APHIS must ensure that licensed exhibitors, breeders, and dealers, are not contributing to the exotic pet trade. Further, the Fish and Wildlife Service relies on APHIS to ensure the welfare of threatened and endangered species when issuing permits for captive animals under the Endangered Species Act. *See* 50 C.F.R. § 17.3 (definition of harass in the definition take when applied to animals in captivity does not include generally accepted husbandry practices that meet AWA standards). If APHIS were to adopt the minimum requirements proposed in this petition, it would substantially bolster the agency's position in combating these problems.

In summary, by not explicitly prohibiting direct and unsafe close contact with big cats, bears, and nonhuman primates of any age, APHIS actually facilitates unmanaged and irresponsible breeding of endangered species, substandard husbandry practices, excessive handling of infants, unnecessary and stressful transporting, abusive training and inhumane declawing and de-fanging, disease transfer to exhibited animals, and risk of injury and disease transfer to the public, and undermines conservation efforts and consumer expectations that USDA conducts proper oversight of licensed facilities. Indeed, even in China, which is not usually known for progressive animal welfare measures, one province has prohibited public contact with tiger cubs. *See* Xinhua, *No More Photos with Siberian Tiger Cubs in NE China* (July 20, 2012), *at* http://www.china.org.cn/environment/2012-07/20/content_25962450.htm?r=y. USDA/APHIS must take prompt action to address this animal welfare crisis.

EXPERT DECLARATIONS

Dr. Ronald Tilson (pg 57)

Else Poulsen (pg 63)

Dr. Henry M. Richardson (pg 66)

Carcle Baskin (pg 69)

Declaration of Ronald Tilson, Ph.D.

State of Minnesota)
)
County of Dakota)

I, Ronald Tilson, hereby declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. The facts set forth are true to the best of my knowledge and recollection.

2. I received my Ph.D. in Ecology from the University of California, Davis in 1980. I also spent 4 years in a post-doctorate position in Conservation Biology at the Desert Ecological Research Institute in Namibia. I am an Associate Adjunct Professor in the Fish, Wildlife and Conservation Biology Department at the University of Minnesota and the Senior Conservation Advisor to the Minnesota Zoo Foundation. I have been a member of the Association of Zoos and Aquariums' (AZA's) Felid Taxon Advisory Group (Felid TAG) since 1990. I served as the Director of Conservation for the Minnesota Zoo for 21 years. From 1987 to 2011 I coordinated the AZA Tiger Species Survival Plan (SSP), which manages approximately 260 pedigree tigers living in North American zoos. I have published over 300 scientific articles, testified in animal trafficking trials as a tiger expert, and advocated for regulation to promote responsible care of tigers in the private sector during my entire professional career.

3. I spent 12 years in the field in Asia, Africa, and Central America and initiated and directed the Sumatran Tiger Conservation Program in Indonesia from 1995-2010. In 2006, I was appointed Director of the South China Tiger Advisory Office at the Minnesota Zoo. For 8 years, I served as Chairman of The Tiger Foundation, a Canadian non-governmental organization facilitating tiger conservation. I also served as Co-Chair of the Southeast Asian Programs of the International Union for Conservation of Nature (IUCN) Conservation Breeding Specialist Group, coordinating a Global Tiger Conservation Strategy in Southeast Asia. I have conducted inspections of privately-run big cat facilities at the request of state law enforcement, focusing upon animal care and facility conditions, including the manner in which the animals are kept, the potential threat of escape, cleanliness and hygiene and particularly, the overall assessment of both staff and animal safety.

4. During my career I was the primary editor of the book *Tigers of the World: The Biology, Biopolitics, Management and Conservation of an Endangered Species* (published in 1987); co-editor of the monograph *Management and Conservation of Captive Tigers* (that was translated into the national languages of Thailand,

Indonesia, Russia, China and Vietnam – a revised version of this monograph will be published in 2012); creator of the first web site on tigers called the *Tiger Information Center* (initiated in 1995); co-coordinator of the *Year of the Tiger* Conference (held in 1998); and finally, I was the co-editor of the 2nd revision of *Tigers of the World: The Biology, Politics and Conservation of Panthera tigris* (published in 2010).

5. My extensive research, publications, and experience coordinating global conservation efforts involving both captive and wild tigers make me uniquely qualified to attest to the compromised wellbeing of tigers and other big cats in the context of public exhibition. I strongly support this petition to prohibit public contact with big cats, bears, and nonhuman primates of any age in order to protect animal welfare and public safety and to promote conservation of endangered species.

6. Based on my experience of coordinating a legitimate tiger conservation propagation program, I know that it is essential that captive breeding be conducted on the basis of sound science and professional husbandry standards. For example, the Tiger SSP maintains international studbooks for Amur, Sumatran and Malayan tiger subspecies, analyzes their genetic lineages all the way back to wild-caught founders, and annually evaluates the SSP populations to determine breeding recommendations that preserve and/or increase genetic integrity and account for the space available within SSP participating zoos for adult animals. Conversely, breeding practices by public contact exhibitors, who do not employ these principles, seriously undermine legitimate *in-situ* species conservation efforts, jeopardize animal health and welfare issues, and sends false and misleading conservation messages to the general public.

7. Roadside zoos and other unaccredited facilities breed cubs recklessly each year to supply the demand for public handling. While the exact number of births is unknown, as these numbers are often not reported and remain untracked, it is likely that well over 100 tiger cubs per year are born in the U.S. outside of the AZA Tiger SSP. Private breeders typically ignore professionally-recognized best practices like maintaining/increasing genetic integrity, allowing mothers to rear their own offspring, and insuring both mother and cubs are not subjected to stressful environments, such as constant inter-city transfers in inadequately designed vans/trucks. By frivolously breeding tigers, for example by not maintaining genetic diversity, the result is that these offspring most likely will have lower reproductive success, some will suffer from congenital defects such as hip dysplasia and cleft palates, and a few will become so neurotic that they will attack and maim or kill their cage mates. It is imperative that captive populations of endangered species are managed to promote legitimate conservation efforts that are focused on the long-

term goal of using these animals for *in-situ* efforts (by augmentation of existing populations or as reintroduction candidates) by range countries.

8. Prematurely removing a big cat cub from its mother is not condoned by the majority of animal care professionals because it may have significant negative developmental and welfare impacts for both the cub and its mother. Most importantly, the mother provides colostrum to a cub in the first 12-24 hours of nursing, giving the cub essential nutrients and antibodies to bolster its undeveloped immune system. In the wild, a tiger cub will stay with its mother until sexual maturity, typically 2.5 to 3 years. Forcibly separating a cub before that time can lead to negative long-term health and behavioral repercussions. These unnecessary impacts would be better documented if all deceased individuals underwent a proper necropsy, but that is not common practice at most substandard breeding facilities. Tiger experts with hundreds of years of experience in captive propagation agree that it is normally in a cub's best interest to stay with its mother until the species-typical age of dispersal (i.e., 2.5-3 years). Premature separation impacts the mother as well – public contact exhibitors may breed a female tiger as many as three times per year, which would never occur in the wild. Science-based knowledge of a tiger's reproductive natural history, common sense derived from years of professional management of tigers in AZA-accredited zoos, and a nod to ethical and moral responsibilities to care and nurture captive tigers to the best of our abilities, all indicate that repetitive breeding - similar to what occurs in puppy mills - is detrimental to the mother.

9. Hand-reared cubs typically weigh less than mother-reared cubs, and often suffer digestive issues from formula-feeding and unhygienic environments, potentially resulting in infection. For example, experts know that in the event that a cub must be hand-reared (because the cub's mother is not providing adequate care), cubs should lie on a flat surface during bottle-feeding to prevent aspiration. However, it appears that many substandard exhibitors allow members of the public to bottle-feed tiger cubs while holding them in an improper and unsafe position that increases chances of aspiration and death. Additionally, these public-feeders seldom have access to washing basins, do not wear proper clothing or hand-gloves, are not screened to see if they are sick, coughing or exuding mucus from colds and viruses, thus creating an unhygienic environment that endangers the cub specifically.

10. Hand-reared cubs are also susceptible to behavioral disorders, causing them to display abnormal traits as adults. For example, tiger cubs reared by surrogate animals such as dogs often do not acquire species-typical behaviors. The large body of evidence regarding maternal bonding versus infant separation in most every primate family studied is instructive in the big cat context – for mammals, not being

reared by a mother of the same species, and being in the company of other litter mates, is a handicap to developing normal adult behavior.

11. Big cat cubs are born blind, fragile and completely dependent on its mother's care, warmth and milk to survive – in fact, in both wild tigers and captive tigers, neonatal mortality is highest (about 30%) during the first 30-90 days - which is why legitimate conservation propagation programs allow dams and their cubs to be left undisturbed after birth to allow the mother and offspring to bond and establish a feeding routine. Indeed, accredited zoos generally do not even put a mother and cubs on exhibit until the cubs are at least 12 weeks of age, due to the potential impacts of stress and/or accidents from exhibition. In many instances where substandard facilities separate cubs because of a claim that the mothers are not providing proper care, it may be that the birthing environment, including the presence of staff, contributed to the rejection by the mother.

12. Big cats normally sleep up to 80% of every 24-hour day, but public handling severely interrupts this sleep cycle, causing exhaustion, anxiety, irritability, and associated physiological consequences that compromises their immune system. Transporting animals for exhibition purposes poses additional and serious health concerns for big cats. Travel conditions and noise often cause stress, anxiety, and diarrhea in big cats, especially cubs, compromising their immune systems and making them more susceptible to disease. There is probably no other recognized event that is considered more dangerous for a big cat than being transferred from a place of familiarity to one of unknown familiarity. Big cat transfers are well recognized within the professional care fraternity as one of, if not the most, leading cause of premature death in tigers.

13. Captive tigers are susceptible to diseases, including canine distemper, bacterial meningitis, colisepticemia, and salmonella, which is also fatal to tiger cubs. Because signs of disease are often latent until the disease is advanced, a tiger's health and welfare are dependent on acute perceptions in behavioral or physical changes, which are best noted by formally trained staff caring for tigers in familiar environments. Exhibitors conducting public handling operations usually do not have the incentive, skill, or most importantly, a commitment to responsibility, to recognize these symptoms.

14. Allowing public contact with often unhealthy animals also poses a risk to public health and safety. Tiger teeth and claws are incredibly sharp from the moment they erupt, around seven weeks of age. Having hand-reared tigers myself (when truly necessary for the health and wellbeing of the infant), I know that young tigers are often uncomfortable with being handled, as observed by the animal squirming and

trying to get away by biting, scratching, defecating, urinating, and squealing. Thus, allowing public contact with even young cubs poses a risk to public safety, especially for young children.

15. Once tiger cubs reach maturity or are no longer profitable - because they can no longer be handled by the public - they are often sold and relocated to other substandard facilities where they do not receive proper care (including contaminated food and dirty enclosures). It is extremely problematic that licensed exhibitors are allowed to maintain mass breeding operations but assume no responsibility for the lifetime care of the animals they produce.

16. In addition to all of the animal welfare and public safety concerns discussed above, it is important to note that with a critically endangered species like tigers, the business of using these animals as photographic props undermines legitimate conservation efforts. Indeed, by allowing members of the public to handle tiger cubs, these businesses contribute to the demand for big cats as exotic pets. Further, because there is no oversight of all of the tigers being born in the U.S., public contact exhibitors could be supplying the illegal trade in tiger parts for traditional Asian medicine.

17. The unmanaged tiger population is a different creature altogether. They are no longer Amur or Sumatran or Bengal tigers. They are tiger soup. It is improbable, and, in fact, undesirable, that any will ever be released into the wild, despite the argument by some private owners to the contrary, and thus they remain genetically indistinct large predators in cages with little or no value to the future of their kind. As tigers they have no worth, but for sellers of their parts they are worth a fortune.

18. Where still legal, tigers are bought, sold, and bred. They are played with like house cats. They are show-cased for money, and conceit, and they are raised for the personal gratification of their owners. Injuries and deaths to caretakers and visitors are brushed away as either poor husbandry or bad luck, not the result of hundreds of thousands of years of deeply rooted predatory instinct. Based on their experiences with their own pets and various fictional depictions, many people have a strong desire to be close to and to touch wild animals. Many also believe that wild animals, even large predators, will respond positively to love and affection and return that affection in kind. This is a recipe for disaster. Large carnivores should not be treated like domestic dogs or cats. Getting too close to any large predator, whether captive or wild, is risky and the public apparently is often not getting this important message.

19. The keeping and unregulated breeding of tigers is not healthy for people, tigers, or tiger conservation. Municipalities, states, and federal governments should be

- encouraged to restrict the breeding, sale, and irresponsible private ownership of tigers and other large predators. This is already happening through the efforts of a few organizations, and a growing number of local jurisdictions. Ending uncontrolled breeding of tigers and other exotic wildlife outside of legitimate, scientifically managed programs would also lessen or eliminate the need for sanctuaries, and the funds used to operate these facilities could then be diverted to conservation. This trend should be encouraged both in the United States and around the world.

Pursuant to 26 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my own personal knowledge, and as to those matters, I believe them to be true.

Executed this 16th day of October, 2012, in Apple Valley, Minnesota.

Ron Tilson

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Dr. Ronald Tilson

Declaration of Else Poulsen

Ontario)
)
Canada)

I, Else Poulsen, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. The facts set forth are true to the best of my knowledge and recollection.

2. I have been a Captive Wildlife Management Consultant for 12 years. I received my Bachelor's Degree in Biological Sciences and a 4 year diploma in Captive Wildlife Husbandry. I have over 25 years of experience working in captive wildlife management at zoos like the Calgary Zoo and the Detroit Zoo, which are accredited by the Association of Zoos and Aquariums (AZA). I have authored numerous scientific articles on bear behavior and husbandry. In 2009, I published a book entitled "*Smiling Bears-A Zookeeper Explores the Behavior and Emotional Life of Bears*." I am a member of the International Association for Bear Research and Management and the American Association of Zookeepers.

3. I am a recipient of the AZA Bear Research Excellence Award, and President of the Bear Care Group, a nonprofit organization dedicated to the continued organization of international bear husbandry. The Bear Care Group facilitates communication, education, and research sharing amongst international bear care professionals in the interest of global bear welfare and conservation.

4. Based on my significant experience in bear husbandry, I understand the negative welfare, public safety, and conservation impacts of frivolous breeding and public contact exhibition of bears. Therefore, I support this petition to prohibit public handling of bears, big cats, and nonhuman primates of any age.

5. Breeding bears outside of legitimate captive propagation programs has serious implications for bear welfare and conservation. These practices result in a population of bears without genetic integrity (and thus little conservation value) and a surplus of bears relative to the space available to provide adequate lifetime care. Often exhibitors engaged in the businesses of allowing public handling of bears do not employ professionally recognized best practices like keeping a studbook that is shared between facilities to encourage genetic diversity and accountability.

6. Premature separation of mother and newborn bears is a common practice for public contact exhibitors, as hand-rearing cubs allows the public access to small bears that are easier to feed and handle. However, this has severe, long-term behavioral impacts for the cubs, and bear experts agree that hand-rearing cubs should be a last resort and only done if a mother is not willing and able to care for the cub(s) and no cohorts are available for peer rearing. Bear cubs have a genetic expectation to learn from their mothers – cubs need to be taught how to avoid danger and build nests and be introduced to complex habitats. Bears learn species-typical reproductive behaviors from mimicking adult behavior. Bear cubs are very sensitive to trauma, as evidenced by rescued cubs who are known to have witnessed the death of their mothers. For example, I rehabilitated a three-month old bear cub who lost her mother and developed the stereotypical behavior of pacing quickly in her enclosure. This bear suffered long-term impacts from being deprived of maternal influence.

7. Without the opportunity to learn healthy bear behavior, cubs are more prone to stress, anxiety, and behavioral issues like entrenched stereotypes. Any public handling of a bear cub is by definition excessive and undermines animal welfare. Bear cubs are often transported around the country to facilitate public contact exhibition, and this deprives cubs of the sleep, exercise, and routine that they need. Traveling and public handling are very stressful for a bear cub. For example, daily and seasonal sleep cycles are severely disrupted for travel or performance. Bears are diurnal and sleep twice a day, a schedule that is inconsistent with being awake during normal business hours for public contact exhibitors. Bears are metabolically depressed in the fall, and need to den in order to rest and encourage tissue repair. Unfortunately, substandard exhibitors often do not provide bears with the opportunity for sufficient daily and seasonal rest (as public handling is prioritized over the animal's need for sleep). Public handling of a sleep-deprived bear increases public safety risks, as such bears are more irritable and stressed.

8. Public handling of even infant bear cubs is unsafe. Bear cubs bite naturally, and learn not to from parents or siblings who bite back. Further, bear claws do not retract and even a young cub can cause substantial injury to humans, especially young children. A hand-reared bear at a roadside zoo or traveling menagerie is far less likely to have exposure to other bears to learn social cues, which may result in abusive training techniques in an attempt to curb biting and scratching.

9. Cubs used for public handling may be underfed, intentionally or due to a lack of knowledge of adequate care. Suppressing growth may extend the length of time a bear cub can be handled by the public before the animal is too large.

10. Cubs bred for public handling frequently end up in substandard facilities, such as roadside zoos, when they become too large or dangerous to handle. It is very difficult to find homes for bears once they are discarded by public contact exhibitors. There are few facilities that are able to provide appropriate lifetime care, and the number of unwanted bears far surpasses the number of spaces available in credible sanctuaries. Space at these sanctuaries is also in demand for rehabilitating wild bears, making it even more difficult to place hand-reared bears previously used for public contact exhibition. As a result, these unwanted, unprofitable bears are often sent to substandard facilities or killed (perhaps even contributing to the illegal trade in bear parts for traditional medicine).

Pursuant to 26 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my own personal knowledge, and as to those matters, I believe them to be true.

Executed this 16th day of October, 2012, in Ontario, Canada.

Else Poulsen

Declaration of Henry M. Richardson, DVM.

State of California)
)
County of Butte)

I, Henry M. Richardson, hereby declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. The facts set forth are true to the best of my knowledge and recollection.

2. I am a veterinarian with expertise in wild animals living in captivity, and I have consulted with numerous nonprofit organizations and government agencies regarding the welfare of animals in facilities across the country. I have more than 40 years of experience providing care for animals residing in accredited zoos, circuses, and in private ownership. For three years I have served on the Board of Directors for Chimpanzee Sanctuary Northwest, a facility accredited by the Global Federation of Animal Sanctuaries.

3. I have traveled to Bolivia three times to provide veterinary assistance to five lions and a baboon who were rescued from a Bolivian Circus. I also served as the Project Veterinarian for Bolivian Lion Ark from November 2010 through February 2011, when I assisted the Bolivian government in rescuing 25 lions from circuses and traveled with the lions to a sanctuary in Colorado to monitor health and stress during transit. In the 1990's I worked in Rwanda providing veterinary care to endangered mountain gorillas while monitoring and evaluating the health of mountain gorilla populations.

4. Because of my extensive experience with captive animals, I strongly support this petition to prohibit public contact with big cats, bears, and nonhuman primates of any age. Such unprofessional practices are often cruel and dangerous and undermine conservation efforts.

5. Unmanaged and irresponsible breeding practices pose a broad range of problems for big cats, bears, and primates. For example, inbreeding to produce aesthetically-pleasing white tigers often results in facial deformities, hip dysplasia, potential renal failure, and a shortened life span. Similarly, cross-breeding tigers and lions to produce ligers also poses health problems for the cubs, including poor bone health related to their large size, and shortened life spans. White tigers and hybridized big cats do not benefit conservation, but often are produced by substandard facilities looking to profit from exhibition.

6. It is a basic tenet of mammalian biology that offspring are reared by their dams, including a relatively lengthy period of nursing and weaning and learning essential skills for adulthood. Premature separation of mothers and their offspring often results in poor health and behavioral abnormalities in the infants, some of which can persist throughout a hand-reared infant's lifetime. Premature separation can also negatively impact dams, who devote significant resources to gestation and birth – I have seen female cats emit a mournful call for weeks after being forcibly separated from their offspring and I have no doubt that females who lose their young experience a sense of loss.

7. The length of time that experts recognize as necessary for normal infant development varies depending on the species, but there is general consensus that in legitimate captive propagation programs the best practice is to avoid disturbing mothers and newborns (physically or even audibly) so that they can bond and establish a routine for proper physical and behavioral development. In contrast, exhibitors engaged in the business of breeding for public handling often prematurely and forcibly separate infants both to obtain young cubs for public contact and to encourage a dam to reproduce again more quickly.

8. When infant big cats, bears, or primates are prematurely separated from their dams it results in a weakened immune system, in part because these infants often do not receive proper nutrition when deprived of their mothers' milk. These hand-reared animals have further weakened immune systems when they are deprived of sufficient rest and exercise to make them available for public handling. When these young animals with compromised immunity are handled by the public, they are particularly susceptible to contracting diseases. For example, feline distemper virus can live on clothing for 18 hours and a member of the public with an infected housecat could easily transmit this disease while holding a tiger cub.

9. Infant big cats, bears, and primates who are prematurely separated from their mothers often experience long-term behavioral abnormalities, especially related to their own reproductive behavior. These impacts are very well established with regards to primates, and that body of evidence is largely applicable to big cats and bears as well. Indeed, big cat cubs and especially bear cubs are known to be very dependent on their dams to learn species-typical adult behaviors.

10. The threats to public safety from handling of big cats, bears, and nonhuman primates of any age are significant. For example, when big cat cubs are permitted to be handled, bites or scratches that are likely to occur could cause infection. I have also seen cases where ringworm and parasites have been transmitted to humans from big cat cubs during the course of public handling. Bear cubs frequently have

round worms, which human children are particularly susceptible to due to hand-to-mouth contact. Since bear claws are not retractable, these animals pose a public safety risk even at very young ages.

Pursuant to 26 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my own personal knowledge, and as to those matters, I believe them to be true.

Executed this 15th day of October, 2012, in Paradise, California.

/s/ Dr. Henry M. Richardson

Dr. Henry M. Richardson

Declaration of Carole Baskin

State of Florida)
)
County of Hillsborough,)

I, Carole Baskin declare as follows:

1) I have personal knowledge of the facts set forth in this declaration. The facts set forth are true to the best of my knowledge and recollection.

2) I am the founder of Big Cat Rescue, a facility accredited by the Global Federation of Animal Sanctuaries that is one of the largest sanctuaries in the world for abused and abandoned big cats. Big Cat Rescue currently houses over 100 cats, some of whom were formerly used for public contact exhibition. Big Cat Rescue is a nonprofit organization that strives to reduce the number of big cats that need rescuing and to promote proper care and general wellbeing of big cats. I have over 30 years of experience in large felid husbandry, beginning with my work rehabilitating and releasing bobcats, and I have seen numerous USDA licensees engage in the unscrupulous practice of allowing public contact with big cats of various ages.

3) There is currently a staggering surplus of unwanted and neglected big cats in the U.S., but few facilities have the resources and capabilities to care for them. As a facility licensed by USDA, Big Cat Rescue is regularly inspected; through these inspections I have learned of the deficiencies in USDA oversight of exhibition facilities. For example, it appears to be routine practice for USDA exhibitors to simply ask licensees for an inventory of their animals, as opposed to personally verifying these numbers. This allows unscrupulous licensees to easily falsify information about the number of animals they have, which severely compromises USDA oversight over the rampant breeding and deaths that are occurring at substandard facilities, such as those that engage in public contact exhibition. Similarly, there have been instances where the inspector visiting Big Cat Rescue has informed me of infrastructure changes that are necessary for compliance, yet I know that other facilities are not required to meet the same standards. The difficulty in enforcing the Animal Welfare Act means that it is essential that the agency's regulations are as clear as possible so that licensees are on notice as to what is expected for compliance.

4) The large surplus of unwanted cats is due in large part to unmanaged and irresponsible breeding that routinely occurs, much of which is motivated by the demand for young animals to use in public contact exhibition. Proper care for one

big cat at Big Cat Rescue requires a financial commitment of approximately $10,000 per year. Because many adult big cats cannot be housed together, due to their solitary nature, the infrastructure expenses to provide sanctuary for all these surplus animals would be significant. Due to financial constraints, Big Cat Rescue and other accredited sanctuaries routinely have to refuse to take in big cats who need sanctuary. As a result, unwanted big cats (many of whom were used in public contact exhibition until they grow too large) are often sent to substandard facilities with inadequate living conditions.

5) Because young cubs are the most profitable for exhibitors, most are prematurely separated from their mothers. These cubs are hand-reared, which I have seen result in long-term behavioral abnormalities. For example, Big Cat Rescue is home to one tiger who was separated from his mother soon after birth and still sucks on his paws 17 years later. Abnormal suckling behavior is common in hand-reared cats and is likely a coping mechanism for maternal deprivation. At least two other adult exotic cats at Big Cat Rescue who were hand-reared display similar abnormal behavior.

6) Facilities engaged in public contact exhibition often are motivated primarily by commercial interests and often fail to provide adequate care to their animals. Many of the big cats we receive suffer long-term health problems resulting from previous substandard care. For example, weak bones and early blindness are common effects we see resulting from poor nutrition, such as diets too high in sugar. Big cats used in public contact exhibition are also frequently exposed to stress-inducing traveling between locations where public contact exhibition occurs. Transporting big cats for public contact exhibition is an unnecessary risk to the health of the animal. When Big Cat Rescue receives big cats, it often takes weeks or even months for the cat to recover from transport and adjust to its new environment and begin eating properly. When public contact exhibitors frequently shuffle big cats around the country to different exhibition locations, the animals never get the opportunity to adjust to their surroundings and are thus under constant stress.

7) Big Cat Rescue does not allow contact between our cats and the public. Although we do not receive the cats until they are older (likely because young animals are more profitable), we do not allow direct public contact with big cats at any age due to the animal welfare and public safety risks. Even small cubs are capable of breaking fingers due to their powerful jaws, making public contact with big cats of any age dangerous.

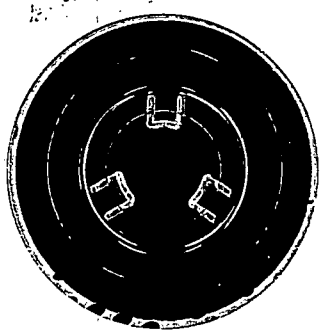
Pursuant to 26 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my own personal knowledge, and as to those matters, I believe them to be true.

Executed this 17th day of October, 2012, in Tampa, Florida.

Carole Baskin

Carole Baskin

The Humane Society of the United States
Amended Petition For Rulemaking
To Prohibit Public Contact With Big Cats, Bears, And Nonhuman Primates
January 7, 2013



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