

COMMENTS

THE FORGOTTEN COOL CATS AND KITTENS: HOW A LACK OF FEDERAL OVERSIGHT IN THE USDA LED TO INHUMANE LOOPHOLES IN THE EXPLOITATION OF BIG CATS IN AMERICA

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INTRODUCTION

“Murder, mayhem, and madness.”¹ *Tiger King*, Netflix’s hit docuseries,² publicized the world of privately-owned big cats³ in America and the inherent issues that come with private ownership of exotic animals. The show featured big cat enthusiasts with drastically different views pertaining to big cat ownership regulations in the United States.⁴ Despite the enthusiasts seeming interest in and affection toward big cats, the featured facilities at these zoos severely lacked adequate federal oversight.⁵

Joe Exotic, the self-proclaimed “Tiger King,”⁶ owned and operated a private zoo in Oklahoma where he ran one of the largest tiger breeding and cub petting⁷ attractions in the United States.⁸ As one of the most prolific big cat breeders, Exotic used newborn cubs as a tourist attraction until they grew

1. TIGER KING: MURDER, MAYHEM AND MADNESS (Netflix 2020) [hereinafter TIGER KING].

2. Tyler Hersko, ‘*Tiger King*’ Had 34 Million Viewers Within 10 Days of Launch, *Fox to Air Special*, INDIEWIRE (Apr. 8, 2020, 10:00 PM), <https://www.indiewire.com/2020/04/tiger-king-netflix-viewership-fox-special-1202223808/>.

3. *Big Cat Question and Answer*, ANIMAL & PLANT HEALTH INSPECTION SERV. [hereinafter *Big Cat Q&A*], https://www.aphis.usda.gov/animal_welfare/downloads/big_cat/big_cat_q&a.pdf (last visited Mar. 6, 2021) (stating the U.S. Department of Agriculture’s (USDA) Animal & Plant Health Inspection Services (APHIS) considers “[l]ions, tigers, jaguars, leopards, cougars, cheetahs, and any hybrids thereof” to be big cats).

4. Enthusiasts like Joe Exotic, who thrived off the earnings of a roadside zoo, and Carol Baskin, who operated a big cat sanctuary. See TIGER KING, *supra* note 1.

5. K. Thor Jensen, ‘*Joe Exotic*’ Sentenced to 22 Years for Shooting Five Tigers, Plotting to Murder Animal Rights Activist, NEWSWEEK (Jan. 23, 2020, 2:38 PM), <https://www.newsweek.com/joe-exotic-sentenced-22-years-1483741> (explaining Joe Exotic’s prison sentence for, *inter alia*, killing five tigers at his facility). See generally Simon J. Williams, *Unsafe Havens: Improving Third-Party Accreditation of Wildlife Sanctuaries*, 93 N.Y.U. L. REV. 1351, 1352–55 (2018) (discussing the problems with some USDA-licensed “sanctuaries”).

6. Karen Brulliard, *How ‘Tiger King’ Became a Tale More About People than Big Cats*, WASH. POST (Apr. 6, 2020, 8:00 AM), <https://www.washingtonpost.com/science/2020/04/06/tiger-king-joe-exotic/> (recognizing Joe Exotic, legally Joseph Maldonado-Passage, as the self-proclaimed ‘Tiger King’).

7. Cub petting is the practice of using infantile big cats in photos for paying members of the general public, which is unsafe and unhealthy for young cubs. Adele Young, *Caged Cats: Private Ownership of Lions and Tigers*, 38 WM. & MARY ENV’T L. & POL’Y REV. 535, 538 (2014); see also *Cub Petting – The Sad Reality Behind This Industry*, WILDCAT SANCTUARY (Apr. 24, 2017), <https://www.wildcatsanctuary.org/cub-petting-reasons-avoid/> (explaining the harmful effects of cub petting, including psychological stress inflicted on cubs).

8. Sharon Guynup, ‘*Tiger King*’ Sentenced to 22 Years for Violence Against Tigers and People, NAT’L GEO. (Jan. 24, 2020), <https://www.nationalgeographic.com/animals/2020/01/tiger-king-joe-exotic-sentenced-22-years-violence-tigers-murder-hire/#close>.

too big to profit off of,⁹ and then either sold them into the pet trade or allowed them to die from lack of proper care.¹⁰ When they age out of cub petting, big cats are at risk of malnourishment and anxiety when placed into inadequate enclosures.¹¹ Unfortunately, Exotic's zoo is not a one-off tale, but rather is reflective of the lives many big cats are forced to live in the United States.

Today, there are more privately-owned tigers¹² in the United States than there are collectively left in the wild.¹³ Although various states ban or heavily regulate the private ownership of exotic animals,¹⁴ the U.S. federal government

9. *Reckless Tiger Cub Petting Zoo: The Humane Society of the United States Investigates GW Exotic Animal Park*, HUMANE SOC'Y OF THE U.S., <https://www.humanesociety.org/sites/default/files/docs/investigative-report-gw-exotic-animal-park.pdf> (“[USDA] regulations prohibit excessive handling of cubs and prohibit unsafe contact with juvenile tigers (e.g., those over 12 weeks).”); see also Palazzo, 69 Agric. Dec. 105, 122–24 (U.S.D.A. 2010) (noting that the USDA found juvenile or adult big cats are a threat to the general public); 7 U.S.C. § 2143(a)(1)–(2)(A).

10. Press Release, The Humane Soc’y of the U.S., What “Tiger King” Didn’t Reveal: Animal Abuse and an Extensive Network of Breeding and Selling Tigers Led by Joe Exotic and “Doc” Antle (Apr. 7, 2020), <https://www.humanesociety.org/news/what-tiger-king-didnt-reveal-animal-abuse-and-extensive-network-breeding-and-selling-tigers>.

11. See Josh Wigler, *‘Tiger King’: PETA Lawyer Reveals What ‘Viewers Didn’t Get to See’ in Netflix Doc*, HOLLYWOOD REP. (Apr. 3, 2020, 10:30 AM), <https://www.hollywoodreporter.com/live-feed/tiger-king-peta-lawyer-brittany-peet-joe-exotic-netflix-series-1288397> (describing how many exhibitors will get rid of or kill tiger cubs once they age out of use for cub petting).

12. Current estimates do not include unreported privately-owned big cats, unlicensed zoos, private breeding facilities, and more. See James Jeffrey, *Does the US Have a Pet Tiger Problem?*, BBC NEWS (June 11, 2018), <https://www.bbc.com/news/world-us-canada-44444016> (speculating that many big cats may be living unregistered in the backyards of many American homes); e.g., Rachel Nuwer, *The Strange and Dangerous World of America’s Big Cat People*, LONGREADS (Mar. 2020), <https://longreads.com/2020/03/16/tiger-trafficking-in-america/> (describing a half-tiger, half-lion ‘tiliger’ cub living at a roadside zoo in rural Oklahoma).

13. See U.S. FISH & WILDLIFE SERV., U.S. EFFORTS TO REGULATE TIGER TRADE (2011), <https://www.fws.gov/international/pdf/factsheet-us-efforts-to-regulate-tiger-trade-2011.pdf> (“By current estimates, there are only 3,200 to 3,500 tigers remaining in the wild worldwide.”); *More Tigers in American Backyards than in the Wild*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/stories/more-tigers-in-american-backyards-than-in-the-wild> (Apr. 5, 2016) (estimating that only 3,200 tigers remain in the wild worldwide).

14. See, e.g., IOWA CODE ANN. § 717F.3–4 (2007) (barring ownership of exotic animals but accepting those who owned exotic pets prior to July 1, 2007 on several conditions, including that the individual submit a registration form providing their information and all wild animals in their possession); see also *State Laws for Keeping Exotic Cats as Pets*, BIG CAT RESCUE (Dec. 21, 2019), <https://bigcatrescue.org/state-laws-exotic-cats/> (providing a list of varying state laws in the United States regarding big cat ownership).

does not ban or regulate domestic ownership of big cats.¹⁵ However, the U.S. Department of Agriculture (USDA) federally regulates the commercial ownership and sale of big cats.¹⁶ Anyone who commercially sells, transfers, or exhibits a big cat must adhere to USDA regulations.¹⁷ Although the power to regulate under the Animal Welfare Act (AWA)¹⁸ should provide for adequate protection of the U.S. big cat population, USDA regulations are currently insufficient.¹⁹

This Comment examines current USDA regulations surrounding the ownership and exploitation of big cats in America and analyzes their effect in conjunction with various treaties and legislative acts. Rather than allowing states to overreach their legislative discretion, this Comment argues that the USDA must strengthen its regulations to adequately protect big cats and meet animal welfare standards. Part I provides a brief history of big cat ownership in the United States and details relevant changes in regulation. Part II presents the scope of the USDA's regulatory authority compared to the Department of Interior's (DOI's) authority, which creates some limitations for the USDA. Furthermore, Part II discusses the legislative acts that shape the USDA's authority and how they are relevant to big cats. Part III evaluates current protocols and identifies gaps in regulation, such as issues with the citation systems and vague inspection guidelines. Finally, Part IV recommends the USDA set maximum citation limits before revoking ownership licenses and modify inspection guidelines to promote enclosure uniformity. Additionally, it recommends that the USDA support the Big Cat Public Safety Act, currently in front of Congress, to protect both big cats and the general public.

15. See Animal & Plant Health Inspection Serv., *Position Statement: Large Wild and Exotic Cats Make Dangerous Pets* (Feb. 2000) [hereinafter *APHIS Position Statement*], https://www.aphis.usda.gov/animal_welfare/downloads/big_cat/position.pdf (“[The] USDA does not regulate the ownership and care of large wild and exotic cats as pets . . .”); accord Young, *supra* note 7, at 537 (explaining that the USDA only regulates animals for commercial purposes).

16. See U.S. DEP'T OF AGRIC., ANIMAL WELFARE ACT AND ANIMAL WELFARE REGULATIONS 1, 5 (2019) [hereinafter *USDA ANIMAL CARE*], https://www.aphis.usda.gov/animal_welfare/downloads/bluebook-ac-awa.pdf (providing a statement of the legislative purpose underpinning the Animal Welfare Act (AWA)).

17. *Id.*

18. 7 U.S.C. §§ 2131–2160.

19. See *infra* Part III (exploring the gaps in USDA regulation, such as inadequate inspection guidelines and inconsistent licensing).

I. WELCOME TO THE JUNGLE: THE HISTORY

A. History of Ownership

Many big cat species are categorized as endangered²⁰ under the Endangered Species Act (ESA).²¹ As the number of big cats around the world continues to decrease,²² the population of privately-owned big cats, namely tigers, has exploded throughout the United States.²³ In the United States, the big cat population held in captivity is estimated to outnumber those left in the wild.²⁴ However, even the most accurate estimates are likely underestimating the big cat problem in America, with many undocumented in unlicensed zoos, apartments, and private breeding facilities.²⁵

In some states, the perception toward exotic big cats has shifted dramatically—from wild animals observed from afar to socially accepted domestic pets.²⁶ Private ownership of big cats is “surprisingly commonplace” in the United States.²⁷ However, unlike household cats, exotic big cats present

20. Examples of endangered or vulnerable big cats are lions, cheetahs, and tigers. Jason Bittel, *Big Cats in Big Trouble*, NAT. RES. DEF. COUNCIL (Nov. 28, 2014), <https://www.nrdc.org/onearth/big-cats-big-trouble>.

21. 16 U.S.C. § 1531.

22. See Bittel, *supra* note 20 (detailing why big cat populations are decreasing across the globe).

23. See Carney Anne Nasser, *Welcome to the Jungle: How Loopholes in the Federal Endangered Species Act and Animal Welfare Act Are Feeding a Tiger Crisis in America*, 9 ALB. GOV'T L. REV. 194, 197–98 (2016) (noting the United States is home to more privately-owned tigers than any other country).

24. See Alex Hannaford, *The Tiger Next Door: America's Backyard Big Cats*, GUARDIAN: THE OBSERVER (Nov. 10, 2019, 02:55 AM), <https://www.theguardian.com/global/2019/nov/10/the-tiger-next-door-americas-backyard-big-cats> (“According to the US Fish & Wildlife Service, there are between 3,200 and 3,500 tigers remaining in the wild globally . . . some estimat[e] there are 5,000 in captivity in the US, though there might be more.”).

25. See *id.* (“The truth is we have little idea how many there are in American ranches, unlicensed zoos, apartments, truck stops[,] and private breeding facilities, due to a mishmash of state, federal[,] and county laws governing their ownership.”).

26. Compare ALA. ADMIN. CODE r. 220-2-.26 (2020) (stating no requirements for private ownership of exotic animals, such as lions or tigers), and S.C. CODE ANN. §§ 50-11-1765, 50-16-20 (2020) (stating that selling, shipping, or importing various wildlife species without a permit is unlawful, excluding big cats), with ALASKA ADMIN. CODE tit. 5, § 92.029-030 (2020) (defining domestic mammals in a way that excludes big cats), and ALASKA STAT. § 16.05.940 (2020) (stating no person may possess exotic live game animals, including wild felines, as pets).

27. Katharine Sucher, *Private Tiger Ownership in the U.S.*, PULITZER CTR. (Mar. 6, 2015), <https://pulitzercenter.org/reporting/private-tiger-ownership-us> (“Experts estimate that there are more than 5,000 tigers living in American backyards and basements—nearly double the number of tigers left in the wild.”).

an obvious public safety threat.²⁸ On October 18, 2011, just before sunset, local officials received phone calls of large exotic animals on the loose in Zanesville, Ohio.²⁹ Terry Thompson, the private owner of over fifty exotic animals, opened the animals' cages on the night he committed suicide, freeing the animals into the public.³⁰ Among the animals were eighteen Bengal tigers and seventeen lions,³¹ animals Thompson easily obtained when Ohio was virtually unrestricted in the transfer and ownership of big cats.³² At the end of the night, local officials killed forty-nine animals, including all of Thompson's big cats.³³

Thompson's story is just one of many examples emphasizing individual states' failure to adequately regulate big cat ownership.³⁴ As the craze, or obsession, for owning big cats grew in America, so did individual collections.³⁵ Joe Exotic developed his love for exotic animals in a Florida pet store before opening the Exotic Animal Memorial Park in 1987.³⁶ Now infamously known as "The Tiger King,"³⁷ Exotic received his first two tigers in 2000, which were considered donations.³⁸ Private ownership quickly developed into running a

28. See Young, *supra* note 7, at 535–36 (describing the danger of wild exotic animals presented to the general public when Terry Thompson set free his collection of wild animals); see also Chris Heath, *18 Tigers, 17 Lions, 8 Bears, 3 Cougars, 2 Wolves, 1 Baboon, 1 Macaque, and 1 Man Dead in Ohio*, GQ: CULTURE (Feb. 6, 2012), <https://www.gq.com/story/terry-thompson-ohio-zoo-massacre-chris-heath-gq-february-2012> (describing the scene where local officers discovered Thompson dead and wild exotic animals on the loose).

29. See Young, *supra* note 7, at 535–36 (noting reports of lions and tigers on a public highway); see also Heath, *supra* note 28 ("By the time the Columbus Zoo team had arrived . . . it wasn't safe for them to try to tranquilize anything because so many animals were circulating. . .").

30. Post Staff Report, *Owner Kills Self, Sets Wild Animals Free in Ohio*, N.Y. Post (Oct. 19, 2011, 09:52 AM), <https://nypost.com/2011/10/19/owner-kills-self-sets-wild-animals-free-in-ohio/>.

31. *Id.*

32. See Young, *supra* note 7, at 535 ("Ohio has traditionally had very few restrictions on animal ownership, exotic or domestic.").

33. Christina Caron, *Zanesville Animal Massacre Included 18 Rare Bengal Tigers*, ABC NEWS (Oct. 19, 2011, 03:41 AM), <https://abcnews.go.com/US/zanesville-animal-massacre-included-18-rare-bengal-tigers/story?id=14767017>.

34. See Young, *supra* note 7, at 536 (stating that despite Thompson's conviction based on keeping animals on his property in an unsafe and cruel manner, Ohio Governor Kasich allowed a prior executive order to expire, so the animals were never removed from Thompson's property).

35. See TIGER KING, *supra* note 1 (explaining the development of the big cat ownership craze).

36. Jensen, *supra* note 5.

37. See Brulliard, *supra* note 6 (recognizing Joe Exotic as the self-proclaimed "Tiger King").

38. Jensen, *supra* note 5; see Karin Brulliard, *The Trouble with Tigers in America*, WASH. POST (July 12, 2019), <https://www.washingtonpost.com/graphics/2019/investigations/captive->

roadside zoo,³⁹ considerably increasing public safety and animal welfare concerns for general visitors and the big cat residents.⁴⁰ Additionally, Exotic, among other big cat enthusiasts and owners, began to feed into a loophole that allowed animal welfare standards to be bent and registration to become unnecessary: breeding generic tigers.⁴¹

B. History of Regulation

As a state party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁴² the United States has an international obligation to ensure that the trade of animals does not threaten their survival.⁴³ The United States heavily criticizes other countries' practices, often alleging animal cruelty or violations of international obligations under CITES.⁴⁴ However, these statements lack legitimacy in the international community due to the hypocrisy of U.S. state practices.⁴⁵ Currently before the U.S. Congress is the Big Cat Public Safety Act,⁴⁶ which

tigers-america/ (implying people can evade cumbersome USDA regulations by “donat[ing]” exotic big cats, rather than transferring them for commercial purposes).

39. See *Roadside Zoos*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/issue/roadside-zoos> (last visited Mar. 6, 2021) (defining ‘roadside zoos’ as “small, unaccredited zoos where wild and exotic animals suffer in captivity”).

40. See Nasser, *supra* note 23, at 227 (finding that roadside zoos engage in breeding and facilitating public handling sessions with tiger cubs).

41. See *id.* at 200 (“Generic tigers are tigers of inter-subspecific crossed pedigree (i.e., tigers who are not of purebred . . . lineage).”).

42. *What is CITES?*, CONVENTION ON INT’L TRADE IN ENDANGERED SPECIES OF WILD FAUNA & FLORA, <https://www.cites.org/eng/disc/what.php> (last visited Feb. 6, 2021) (“CITES . . . aim[s] . . . to ensure that international trade in specimens of wild animals and plants does not threaten their survival.”).

43. *Id.*

44. See Nuwer, *supra* note 12 (“The U.S. government considers closing tiger farms integral to saving wild tigers, but when State Department officials try to negotiate this point with foreign diplomats—especially those from China—they’re often told to clean up their own mess first.”); see also Max Kutner, *America Has a Tiger Problem And No One’s Sure How to Solve It*, SMITHSONIAN MAG. (Feb. 2015), <https://www.smithsonianmag.com/science-nature/america-has-tiger-problem-and-no-ones-sure-how-solve-it-180953974/> (“Some advocates argue that America’s other tiger problem, to put it bluntly, is hypocrisy, at least on the world stage.”).

45. See Nuwer, *supra* note 12 (quoting Grace Ge Gabriel, regional director, International Fund for Animal Welfare (IFAW)) (“When I talk to government leaders about tiger farming in many of the Asian countries, quite often they ask me, ‘What about tigers in the U.S.? What role do the tigers in private backyards in the U.S. contribute to wild tiger conservation?’ . . . Literally, I am speechless. I don’t have an answer.”).

46. Big Cat Public Safety Act, H.R. Rep. No. 116-430 (2020).

would place a ban on domestic ownership of big cats without a USDA license and restrict direct contact between big cats and the public.⁴⁷ Although furthering regulations related to big cat ownership in the United States may seem necessary—especially after binge-watching *Tiger King*—many oppose hardening USDA regulations.⁴⁸

Opponents of big cat ownership regulations often rely on a conservation argument.⁴⁹ Exotic claimed that his zoo's breeding practices would aid in the removal of some big cats, such as tigers, from the ESA.⁵⁰ Additionally, many other roadside zoos that offer cub petting argue that allowing public interaction with cubs encourages the public to be more conscientious about big cat conservation efforts.⁵¹ Doc Antle, the owner of Myrtle Beach Safari in South Carolina, runs a prolific blog where he regularly attests to his conservation efforts by breeding tiger cubs for public interaction.⁵² Additionally, he boasts about never receiving a violation from the USDA in relation to the AWA or the ESA;⁵³

47. *Id.* at 2.

48. See generally Bhagavan Antle, *USDA Protects Captive Wildlife Stakeholders*, DOC ANTLE'S TIGER TALES (Mar. 12, 2017), <https://docantle.blog/2017/03/12/usda-protects-captive-wild-life-stakeholders/> (discussing how Antle is opposed to the strengthening of USDA regulations without practical experience of visiting a facility).

49. See, e.g., *Animal Ambassadors: 21st Century Conservation*, DOC ANTLE'S TIGER TALES (Oct. 31, 2017), <https://docantle.blog/2017/10/31/animal-ambassadors-21st-century-conservation/> (arguing that breeding big cats in captivity is an act of conservation by generating interest in endangered species).

50. See 16 U.S.C. § 1531; TIGER KING, *supra* note 1 (stating the belief that breeding tigers in captivity helps reduce the risk of endangerment); cf. Lauren Breeze, *Myrtle Beach Safari – A Once in Lifetime Hands-On Wildlife Experience*, DOC ANTLE'S MYRTLE BEACH SAFARI (Apr. 10, 2018), <https://myrtlebeachsafari.com/press/myrtle-beach-safari-a-once-in-lifetime-hands-on-wildlife-experience/> (alleging that Doc Antle's "Myrtle Beach Safari" is actively breeding tigers to preserve DNA to prevent the extinction of the species).

51. See TIGER KING, *supra* note 1 (quoting Joe Exotic) ("So you get a baby tiger in a family's lap and they fall in love with this baby tiger and you have 15 minutes of their undivided attention to say 'Look, we gotta save the rainforest because you're killing this little baby tiger's . . . you know where he came from.' They leave with a whole different attitude.").

52. See Bhagavan Antle, *Cubs and Conservation: Where Have all the Tiger Cubs Gone*, DOC ANTLE'S TIGER TALES (Mar. 31, 2020), <https://docantle.blog/2020/03/31/cubs-and-conservation-where-have-all-the-tiger-cubs-gone/> ("Our cubs are not bred solely for the purpose of being part of our interactive programs. They are bred as a conservation measure to help ensure species survival.").

53. 16 U.S.C. § 1531; 7 U.S.C. § 2131; Antle, *supra* note 48 ("TIGERS has never had a violation of the AWA."). But see *Factsheet: T.I.G.E.R.S (Bhagavan Antle)*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (PETA) [hereinafter *T.I.G.E.R.S. Factsheet*], <https://www.mediapeta.com/peta/PDF/TIGERS-bhagavan-antle-fs.pdf> (last visited Mar. 6, 2021) (listing USDA citations against Doc Antle's zoo for AWA violations dating from 1988 to 2018).

however, failure to receive a violation does not imply adequacy of compliance with USDA regulations.⁵⁴

Big cat regulation proponents point to how absent uniform regulation allows private owners of big cats to avoid recording the existence of big cats, essentially denying the animals protection under USDA regulations.⁵⁵ Therefore, the USDA must strengthen the regulations it has control over to ensure adequate protection of big cats in the United States. Although opinions on banning big cat ownership vary, the United States has both an international and domestic duty to ensure that the law protects big cats, especially those that are endangered.

While this Comment primarily focuses on USDA regulations and the need for comprehensive federal oversight in big cat protection,⁵⁶ it is important to examine big cat regulation developments in America and, specifically, the regulation of tigers. The U.S. Fish & Wildlife Service (FWS)⁵⁷ exercises and successfully uses its regulatory authority to protect tigers in the trade.⁵⁸ The FWS implements CITES. Executing the principles of CITES involves compliance with the ESA, which the FWS is in charge of implementing.⁵⁹ Created in 1973, the ESA determines both endangered and threatened species and creates policies to reduce the risk of species loss.⁶⁰ Tigers are an endangered species protected under both the ESA⁶¹ and CITES.⁶²

54. Current USDA inspection guidelines allow for “teachable moments,” which excuses subpar animal welfare standards, sometimes repeatedly, before an entity receives a formal citation. *See infra* Part III (discussing teachable moments).

55. *See* Guynup, *supra* note 8 (describing how individuals can obtain a USDA license to breed gerbils and then secretly breed tiger cubs).

56. *See infra* Part III (discussing the gaps in USDA regulation that could be revised to increase protection for big cats in the United States.)

57. The U.S. Fish & Wildlife Service (FWS) is a subagency of the U.S. Department of the Interior (DOI). *About the U.S. Fish & Wildlife Serv.*, U.S. FISH & WILDLIFE SERV., https://www.fws.gov/help/about_us.html (Jan. 21, 2021) (“We are a bureau within the Department of the Interior.”).

58. *See* 50 C.F.R. §§ 17.11, 17.21 (2019) (providing regulatory limits on trading endangered species in the United States, including tigers); *see also* Press Release, U.S. Fish & Wildlife Serv., Tiger Rescued from Smugglers Finds Permanent Sanctuary in San Diego County, CA (July 27, 2018), https://www.fws.gov/news/ShowNews.cfm?ref=tiger-rescued-from-smugglers-finds-permanent-sanctuary-in-san-diego-&_ID=36291 (describing FWS’s rescue of an infant tiger from smugglers).

59. *International Affairs*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/international/cites/> (last visited Mar. 6, 2021).

60. 16 U.S.C. §§ 1533, 1538, 1540.

61. *Endangered Species List*, U.S. FISH & WILDLIFE SERV., <https://ecos.fws.gov/ecp0/profile/speciesProfile.action?spcode=A043> (last visited Mar. 6, 2021) (listing tigers as endangered mammals, known by their scientific name “*panthera tigris*”).

62. *See* CONVENTION ON INT’L TRADE IN ENDANGERED SPECIES OF WILD FAUNA & FLORA, APPENDICES I, II, AND III: INTERPRETATION 11 (2020), <https://cites.org/sites/default/files/eng/app/2020/E-Appendices-2020-08-28.pdf> (listing tigers by their scientific name, “*panthera tigris*”).

Prior to 2016, only purebred tigers⁶³ required a DOI permit to be bought and sold in interstate commerce.⁶⁴ However, as generic tigers became increasingly popular throughout the United States, regulation failed to adapt to include generic tigers under any established framework of protection.⁶⁵ Generic tigers are those “of unknown genetic origin” in which the breeding of varied species does not naturally occur in the wild.⁶⁶ The owners of roadside zoos, such as Joe Exotic and Doc Antle, profited from cub petting and continued to breed, sell, and purchase generic tigers, ultimately denying those animals protection under the law.⁶⁷

Animal rights activists and organizations adamantly advocated for closing this federal loophole, which allowed for exploitation of generic tigers for the benefit of individual profiteering.⁶⁸ Finally, in 2016, the FWS closed the loophole, prohibiting the transfer or sale of generic tigers without a permit.⁶⁹ Current inadequate regulatory mechanisms and human-made obstacles to survival are ways that species earn the ESA’s protection, which is exactly how the FWS used CITES, the ESA, and its overarching regulatory authority to close the federal loophole for exploiting generic tigers.⁷⁰

The ESA is the enabling statute that allows the FWS to issue new regulations.⁷¹ To close this particular loophole, the FWS published an intention to propose a new rule that would include generic tigers in its Captive-bred

63. See *Questions and Answers: U.S. Captive-bred Inter-subspecific Crossed or Generic Tigers Final Rule*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/home/feature/2016/pdfs/Generic-Tiger-Final-Rule-FAQs.pdf> (last visited Mar. 6, 2021) (defining purebred tigers as members of Bengal, Sumatran, Siberian, or Indochinese subspecies).

64. See *id.* (noting that selling generic tigers in interstate commerce did not require a permit from 1998–2016).

65. See *id.* (explaining that in 1998 the requirement to register “inter-subspecific crossed or generic tigers” was removed).

66. *Id.*

67. See Kimberly Ann, *Tiger King: A Show of Profit and Abuse*, LEFT VOICE (Apr. 14, 2020), <https://www.leftvoice.org/tiger-king-a-show-of-profit-and-abuse> (discussing unregulated and inhumane breeding programs exposed in *Tiger King*).

68. See *Waiting on USFWS to Rescind the Generic Tiger Exemption*, BIG CAT RESCUE (Aug. 26, 2014), <https://bigcatrescue.org/close-generic-tiger-loophole/> (describing the benefits big cats would receive if the generic tiger loophole was closed).

69. 50 C.F.R. § 17.21(g)(6) (2016).

70. See 16 U.S.C. § 1533(a)(1)(D)–(E) (providing that one of the ways the Secretary may determine if a species is either endangered or threatened is if there is an “inadequacy of existing regulatory mechanisms,” or “man[–]made factors affect[] its continued existence.”).

71. 16 U.S.C. §§ 1531; *Enabling Legislation*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/midwest/TwinCities/legislation.html> (last updated Jan. 9, 2020).

Wildlife Registration (CBW) program.⁷² The FWS proposed the rule and published it in the Federal Register,⁷³ which began the notice-and-comment process and allowed the public to submit comments for the agency's consideration.⁷⁴ The FWS published the final rule in the Federal Register along with a detailed history of legislation, the incoming change, and any public comments the FWS addressed in the final rule development.⁷⁵

The new rule went into effect on May 6, 2016 and was published in the Code of Federal Regulations.⁷⁶ This rule finalized the process of closing the federal loophole that allowed many big cats to go unregistered and be bred without a permit. The revised regulations required tiger owners to obtain an interstate commerce permit or register under the CBW program if they wanted to sell animals across state lines.⁷⁷ The FWS effectively adjusted its regulations to enhance the protection of big cats in the United States. The USDA can enhance animal welfare standards for all big cats by mirroring the FWS's framework.⁷⁸

II. THE EYE OF THE TIGER: THE SCOPE OF USDA'S REGULATORY AUTHORITY

A. *The USDA's Overarching Authority*

The USDA regulates various agricultural aspects, such as food distribution regulations, rural development regulations, and crop and livestock insurance

72. Press Release, U.S. Fish & Wildlife Serv., U.S. Fish & Wildlife Service Strengthens Protection for Captive Tigers under the Endangered Species Act (Apr. 5, 2016), https://www.fws.gov/news/ShowNews.cfm?_ID=35543 (acknowledging that the Captive-bred Wildlife Registration (CBW) program is designed to streamline federal permit requirements for captive-born, exotic, endangered, and threatened wildlife).

73. Endangered and Threatened Wildlife and Plant; U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 52,297 (proposed Aug. 22, 2011) (to be codified at 50 C.F.R. pt. 17).

74. *A Guide to the Rulemaking Process*, OFF. OF THE FED. REG., https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (last visited Mar. 6, 2021).

75. Endangered and Threatened Wildlife and Plant; U.S. Captive-Bred Inter-subspecific Crossed or Generic Tigers, 81 Fed. Reg. 19,923–24 (Apr. 6, 2016) (codified at 50 C.F.R. pt. 17) (noting that the rule meets the requirements set forth in the Administration Procedure Act (APA)); *see also* 5 U.S.C. § 553(b) (delineating requirements for publishing rules).

76. 50 C.F.R. § 17.21(g)(6) (2016) (removing generic tigers (*panthera tigris*) from the list of species that do not need to be registered with FWS before conducting captive breeding).

77. *See id.* (including both purebred and generic tigers under the protection of the new rule); U.S. Captive-Bred Intersubspecific Crossed or Generic Tigers, 76 Fed. Reg. at 52,298 (repeating that generic tigers are included despite not being classified as purebred).

78. *See infra* Part IV (presenting a similar strategy to the one FWS used for the USDA to promote greater protection for big cats in the United States).

regulations.⁷⁹ Some question why the USDA simultaneously regulates how meat is slaughtered and sets animal welfare standards.⁸⁰ Putting aside the perplexities of the regulating agency, the USDA does not regulate the intrastate private ownership of exotic big cats as pets.⁸¹ Rather, this power is vested in principles of federalism, bestowing that right to the states.⁸² While some states have total bans on exotic animal ownership, others choose to selectively impose restrictions or provide no statute on the matter at all.⁸³ However, the USDA regulates the commercial selling, transportation, and exhibition of exotic big cats through its congressional mandate of administering the AWA.⁸⁴ This distinction between private and commercial ownership of big cats will ultimately not result in the protection of all exotic big cats in America. However, it emphasizes the USDA's oversight capabilities in providing protection for some.⁸⁵ While the USDA made some adaptations to its animal welfare regulations,⁸⁶ the issues displayed to the public in *Tiger King* emphasize that current USDA regulations are insufficient to protect big cats,⁸⁷ thus demanding new and improved regulations.

The USDA's situation is analogous to the DOI's closure of the generic tiger loophole for two primary reasons: (1) as the DOI possesses the FWS as an acting subagency, the USDA has the Animal and Plant Health Inspection Service (APHIS) as an acting subagency; and (2) as the FWS has the ESA as an enabling statute, the APHIS has the AWA as an enabling

79. *Regulations and Directives*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/our-agency/about-usda/laws-and-regulations/regulations-and-directives> (last visited Mar. 6, 2021).

80. See Young, *supra* note 7, at 537–38, 549–50 (suggesting that FWS would be a better agency to regulate licensing for animal welfare because the USDA's primary role is to “ensure that food products are safe for human consumption”).

81. 7 U.S.C. § 2131.

82. See *APHIS Position Statement*, *supra* note 15 (explaining that state and local laws apply in relation to private ownership of large wild and exotic cats as pets).

83. See, e.g., 301 KY. ADMIN. REGS. 2:082 (stating that no person may possess inherently dangerous animals, including big cats, unless the animals were owned prior to 2005). But see ALA. ADMIN. CODE r. 220-2-.26 (2020) (restricting imports for some types of animals, but stating no requirements for the ownership of exotic big cats).

84. See 7 U.S.C. § 2131 (stating the congressional statement of policy for the AWA, which is implemented by the USDA).

85. *Id.*

86. See, e.g., 9 C.F.R. pts. 1–3 (requiring entities to apply for a new USDA license every three years instead of continuing the practice of automatic license renewals, and necessitating applicants to disclose any animal cruelty convictions before obtaining a license).

87. See *infra* Part III (highlighting the inadequacies in current USDA's administration of the AWA).

statute.⁸⁸ The APHIS is one of the subagencies under the USDA's overarching authority.⁸⁹ In 1966, Congress passed the AWA to protect animals during commercial sale, breeding, or exhibition.⁹⁰ By 1972, the USDA established the APHIS as a subagency with the purpose of protecting American agricultural values.⁹¹

B. Utilizing APHIS

The APHIS provides federal oversight to ensure the health and care of animals and plants in the United States.⁹² The AWA is the primary tool the APHIS uses to guarantee that the minimum standards of care are provided to animals in the United States.⁹³ However, in 2002, the USDA passed the Animal Health Protection Act (AHPA), granting the APHIS with additional tools to protect animal welfare.⁹⁴ Although only Congress can change the actual law, the USDA, and subsequently the APHIS, can amend existing regulations or create new ones,⁹⁵ as the FWS did in 2016.⁹⁶

According to the APHIS, big cats subject to federal regulation are “lions, tigers, jaguars, leopards, cougars, cheetahs, and any hybrids thereof.”⁹⁷ The AWA regulates the transportation, sale, and handling of big cats, and details the animal well-being requirements to transfer or exhibit big cats.⁹⁸ To comply with the AWA, big cat dealers and exhibitors must acquire a valid license from the USDA.⁹⁹ The Secretary for Agriculture, an agent of the USDA, provides licenses, which may be suspended or revoked, or given in exception to the AWA, at his or her discretion.¹⁰⁰ One requirement for obtaining a license is

88. See USDA ANIMAL CARE, *supra* note 16, at 1 (stating that APHIS is the agency within the USDA responsible for administering the regulations of the AWA).

89. See *Agencies*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/our-agency/agencies> (last visited Mar. 6, 2021) (listing APHIS as one of the USDA's subagencies).

90. *History of APHIS*, ANIMAL & PLANT HEALTH INSPECTION SERV., U.S. DEP'T OF AGRIC., https://www.aphis.usda.gov/aphis/banner/aboutaphis/SA_APHIS_History (last updated Feb. 3, 2021).

91. *Id.* (presenting the protection of United States agriculture as a mission of APHIS).

92. *Id.*

93. See *id.* (noting the significance of Congress passing the AWA).

94. See *id.* (explaining that the passing of the 2002 Animal Health Protection Act consolidated and modernized previous statutes to ensure better animal health protection).

95. USDA ANIMAL CARE, *supra* note 16, at 1.

96. 50 C.F.R. pt. 17.1 (2016).

97. See *Big Cat Q&A*, *supra* note 3 (noting that this definition is consistent with the definition provided by the Lacey Act, 16 U.S.C. § 3371).

98. See 7 U.S.C. §§ 2133–34 (requiring a valid license for dealers and exhibitors).

99. See § 2133 (obtaining a license is subject to the discretion of the Secretary of Agriculture).

100. *Id.*

to have an authorized veterinarian certify the animal's health.¹⁰¹ Additionally, once sold or transferred, both sellers and buyers are obligated to maintain records of the animals bought and or sold.¹⁰² However, while these regulations provide a minimum guarantee of safety for the animals involved, television series, like *Tiger King*, showcase the obvious gaps in federal oversight that exploit big cats in America and the need for additional regulation.

III. JUST LION AROUND: GAPS IN REGULATION

Although the USDA ensures some standard of care for big cats in the United States,¹⁰³ the FWS's adoption of a new rule can serve as guidance for how the USDA should address inadequacies in its own regulation. Stronger federal oversight in big cat ownership, transfer, and exhibition in the United States is needed to ensure that the minimum standards of animal welfare, as detailed in the AWA, are met. This Part will address major gaps in regulations by examining the shortcomings of the licensing and permitting system, and the weaknesses of current big cat enclosure inspections.

A. Licenses and Permits

Big cat dealers and exhibitors in America must obtain a license from the USDA.¹⁰⁴ The application for a license is widely accessible and requires filling out a standard form.¹⁰⁵ Although the application's ease is not inherently suspect, the failures of the licensing and permit system raise serious questions. Licenses and permits are valid when granted by the Secretary of the USDA and remain valid until expiration (subject to renewal), suspension, or revocation.¹⁰⁶ Bearing a license imposes an obligation on dealers and exhibitors to create, keep, and maintain a record of animals sold, bought, or transferred.¹⁰⁷ Handling and moving animals during this process must

101. § 2143.

102. § 2140.

103. §§ 2133–34.

104. § 2133.

105. See *Register for ePermits*, ANIMAL & PLANT HEALTH INSPECTION SERV., U.S. DEP'T OF AGRIC., https://www.aphis.usda.gov/aphis/resources/sa_epermits/eauth-epermits (last updated Sept. 28, 2020) (detailing the steps of creating an account and verifying identity to be enrolled in the e-permit system); see also Nasser, *supra* note 23, at 225–26 (describing how obtaining a federal license for even private owners is incentivized as it is inexpensive, comes with infrequent inspections, and provides a blanket exemption for more restrictive state or local laws).

106. See § 2134 (expressing that dealers or exhibitors are not permitted to transfer, sell, or buy animals from another dealer or exhibitor whose license has been either suspended or revoked).

107. See § 2140 (specifying that records must only be maintained for a reasonable period of time as prescribed by the Secretary of the USDA).

accord with a humane standard as set by the USDA, which includes adequate veterinary care, food, shelter, and water.¹⁰⁸ Failure to adhere to USDA regulations can result in the suspension or revocation of a license.¹⁰⁹

The administrative regulations described above apply to *certain animals*, not specifically exotic big cats.¹¹⁰ Without designing different permits for different species, the USDA risks allowing sham licenses to cheat the regulations designed to protect animals.¹¹¹ For example, the AWA license requirements to breed, sell, transport, or purchase an animal are applicable to either a tiger or a hamster.¹¹² Thus, a big cat breeder can silently omit any recordkeeping of tiger cubs because it is easy to obtain a USDA license claiming a desire to breed a more common warm-blooded mammal.¹¹³ Sham licenses violate the AWA and deny the USDA the opportunity to ensure a minimum standard of care guaranteed to all animals subject to regulation.¹¹⁴

In addition to sham licenses, other inadequacies remain prevalent in licensing and permit regulations.¹¹⁵ James Garretson, a big cat collector and enthusiast, operated a business that housed exotic big cats under several names in Oklahoma.¹¹⁶ The USDA irresponsibly granted a license as an exhibitor to Garretson's business partner, Nicole Ammon, and Garretson

108. § 2143.

109. § 2134.

110. § 2132(g) ("The term 'animal' means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for . . . exhibition purposes, or as a pet . . .").

111. See Sharon Guynup, *Captive Tigers in the U.S. Outnumber Those in the Wild. It's a Problem*, NAT'L GEO. (Nov. 14, 2019), <https://www.nationalgeographic.com/animals/2019/11/tigers-in-the-united-states-outnumber-those-in-the-wild-feature/> ("You can get a USDA license to exhibit or breed gerbils—and then exhibit or breed any animal you want, including big cats.").

112. See § 2132(g) (including both cats and hamsters in the term "animal").

113. See Guynup, *supra* note 111 (describing a situation where an entity receives a license to breed gerbils but then breeds something else, such as tiger cubs).

114. See *Animal Welfare Act*, NAT'L AGRIC. LIBR., U.S. DEP'T OF AGRIC., <https://www.nal.usda.gov/awic/animal-welfare-act> (last visited Mar. 6, 2021) ("The Animal Welfare Act requires that minimum standards of care and treatment be provided for certain animals bred for commercial sale . . . or exhibited to the public."); see also *Interested in Buying a Big Cat?*, BIG CAT RESCUE (June 30, 2020), <https://bigcatrescue.org/buy-a-big-cat/> (discussing how the needs of exotic big cats are drastically different, and costlier, than those of household cats).

115. See, e.g., James Brandon Garretson, 66 Agric. Dec. 119 (U.S.D.A. 2007) (exemplifying how individuals can circumvent license suspensions and revocations by operating under another individual's license).

116. *Id.* at *119–24.

acted as Ammon's agent.¹¹⁷ The tigers at the facility in Oklahoma were malnourished, unnecessarily uncomfortable, and displayed signs of behavioral stress.¹¹⁸ Due to the facility's failure to make adequate arrangements for feedings,¹¹⁹ the tigers were often hungry¹²⁰ and exhibited signs of discontent.¹²¹ Additionally, the enclosures failed to protect the general population from the tigers encaged inside.¹²² Eventually, this carelessness and insufficient consideration of animal welfare led to one young woman's death, after a tiger tore off her arm.¹²³ The USDA ordered both Ammon and Garretson to cease and desist from "engaging in any activity for which a license is required" under the AWA.¹²⁴ In 2017, Garretson worked for another facility with more exotic cats, operating under a license held by his then-girlfriend, Brittany Medina.¹²⁵

Garretson's story is just one *known* story of an individual exploiting a loophole in the USDA licensing and permitting regulation scheme. As this case illustrates, individuals deemed a danger to big cats by the USDA in the past can bypass individual licensing requirements by appointing others without documented history of animal cruelty to obtain the license instead.¹²⁶ Thus, the licensing and permit process is one gap in USDA regulations that compromises the minimum standard of care ensured by the AWA.

117. *See id.* at 122–23 (stating that Ammon's application for a license was initially denied due to her partnership with Garretson who was deemed a liability. Eventually, the USDA granted Ammon's license and Garretson acted under her license as an agent).

118. *Id.* at 119, 125–26.

119. *See id.* at 127 ("After they had left I had been going period of time there were not enough calf legs to adequately feed the cats with. I had brought this to Joe's attention that there was a shortage of meat and that we need to purchase meat in the near future, but nothing was done about it.").

120. *See id.* at 125–26 (detailing the feeding patterns of the tigers, which involved sometimes only being fed every four days even though they should have been fed at a minimum of every other day).

121. *See id.* at 127–28 (paraphrasing Amanda Sternke's affidavit, which states that tigers who are content often make a cuffing sound, but the tigers at the Oklahoma facility did not make this noise as they were sparsely fed).

122. *See id.* at 126 (describing the enclosures as having openings wide enough for a hungry tiger to grab any human who stood too close).

123. *Id.* at 119–20.

124. *Id.* at 157–58 (charging Ammon with \$20,940 in fines and Garretson \$32,560 in fines to be paid to the Treasurer of the United States).

125. Guynup, *supra* note 111.

126. *See id.* (detailing Garretson's multiple counts of inadequate tiger care and operation under another individual's license).

B. Inspections, Citations, and License Revocations

The USDA regulates agriculture as it relates to food sources, making it unusual that it is the same agency responsible for enforcing the AWA.¹²⁷ Nonetheless, the AWA assigns the USDA to perform routine animal welfare inspections at various recognized facilities.¹²⁸ Regardless of USDA regulations, individuals and animal welfare organizations critique the deficient federal oversight in big cat inspections because of lacking inspector presence and knowledge.¹²⁹ Facilities are overlooked and the inadequate conditions exacerbated by poor recordkeeping cause many big cats to suffer inside unaccredited zoos or even apartments.¹³⁰

Among the facilities that receive inspections, USDA regulations fail to provide uniformity in the minimum standard of care guaranteed by the AWA.¹³¹ The USDA's "Animal Welfare Inspection Guide," recently revised in January 2021, was created for inspectors to refer to when making routine site visits.¹³² This guide provides a very basic understanding of animal welfare

127. See Young, *supra* note 7, at 554–55 (“[T]he USDA was thrust into the role of regulation of non-food animals . . .”).

128. U.S. DEP’T OF AGRIC., ANIMAL WELFARE INSPECTION GUIDE, at 1-6, 2-5, (2021) [hereinafter ANIMAL WELFARE INSPECTION GUIDE], https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf.

129. See Young, *supra* note 7, at 554–55 (“The USDA has not hired enough inspectors, does not prioritize this responsibility that does not conform well with its mission statement, and it may be lulled into setting domestic-animal-type safety standards . . .”); *Why Regulations Don’t Work*, BIG CAT RESCUE, <https://bigcatrescue.org/abuse-issues/issues/why-regulations-dont-work/> (last visited Mar. 6, 2021) (alleging that there are too many facilities and too few inspectors to adequately detect the signs of big cats being treated poorly); see also Karin Brulliard, *The USDA Saw No Problems at This Local Zoo. Local Authorities Found a ‘Monkey Dungeon.’*, WASH. POST. (Dec. 19, 2019, 8:00 AM), <https://www.washingtonpost.com/science/2019/12/19/usda-saw-no-problems-this-zoo-local-authorities-found-monkey-dungeon/> (explaining how USDA inspectors found no AWA violations, but local enforcement officers seized 119 animals whose lives were deemed to be in danger the following day).

130. See Hannaford, *supra* note 24 (“The truth is we have little idea how many [tigers] are in American ranches, unlicensed zoos, apartments, truck stops[,] and private feeding facilities, due to a mishmash of state, federal[,] and county laws governing their ownership.”); see also Cathy Liss et al., *Animal Welfare Act: Welfare Standards*, 25 ANIMAL L. 157, 184 (2019) (“[T]he vast majority of the tigers in the U.S. are living in roadside zoos, pseudo-sanctuaries, backyards, basements, and other unaccredited and unqualified facilities.”).

131. See, e.g., Brulliard, *supra* note 129 (showing the discrepancy between a USDA inspector’s report of a pristine zoo and local officials’ report of a “monkey dungeon”).

132. ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128.

but lacks the nuances of varying species' needs,¹³³ which prevents citing instances of animal abuse. For instance, enclosure guidelines state that wild and exotic animals must be "able to make normal postural adjustments," meaning all of the animals' limbs should be able to extend at once without extending through bars.¹³⁴ Not only is this particular guideline insufficient to fulfill basic animal welfare standards but these vague guidelines also fail to ensure a minimum public safety guarantee for those who frequent places with inadequate enclosures.¹³⁵

When visiting a facility, inspectors may utilize a series of tools if a facility fails to comply with USDA regulations.¹³⁶ If there are repeated infractions, failure to comply, or a serious issue arises during inspection, inspectors can issue citations to the facility.¹³⁷ While the inspection guidelines mention one possibility of a license revocation situation,¹³⁸ there is no evidence of any cap to the number of citations that can be received before suspension or revocation becomes automatic.¹³⁹ This begs the question: How effective is the USDA citation system at protecting big cats in America?¹⁴⁰

Citations and license revocations do not appear to correlate with each other.¹⁴¹ Timothy Stark, the former manager of an unaccredited roadside

133. Young, *supra* note 7, at 554–55 (declaring that domestic animals' needs are very different to the needs of exotic animals).

134. ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128, at 4-82.

135. *Cf.* Young, *supra* note 7, at 553 (explaining how safe cages for domestic animals are very different to safe cages for exotic animals, and while APHIS has public safety standards for big cat enclosures, they remain very vague).

136. "Teachable Moments" or "TM" is one tool inspectors have access to. TMs are defined as "minor [non-compliant issues] identified during an inspection . . . and are not cited on an Inspection Report." ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128, at 2-6. Issues that have not been reported in the past two years and do not show animals in noticeable pain or distress may be a TM. *Id.*

137. *See id.* at 2-10–2-11 (listing examples traits of "critical" non-compliant persons/organizations).

138. *Id.* at 4–12.

139. *See T.I.G.E.R.S. Factsheet*, *supra* note 53 (listing Bhagavan Antle's repeated AWA citations spanning over twenty years without having his license revoked).

140. *But see* April Rickert, *USDA Revokes Wildlife in Need's License for Lions, Tigers*, NEWS & TRIBUNE (Feb. 6, 2020), https://www.newsandtribune.com/news/usda-revokes-wildlife-in-needs-license-for-lions-tigers/article_66a2982c-491b-11ea-b1fc-bf4b97d042.html (reporting an example of a business with big cats having its USDA license revoked after over 120 AWA violations).

141. *Compare T.I.G.E.R.S. Factsheet*, *supra* note 53 (listing Bhagavan Antle's repeated AWA citations spanning over twenty years without having his license revoked) *with* Letter from USDA to Mike Quigley, U.S. House of Reps. (May 20, 2020), <https://quigley.house.gov/sites/quigley>.

zoo, was an exhibitor of animals licensed by the USDA with more than fifty citations for failing to meet AWA regulations.¹⁴² These citations stemmed from varied reasons, including “declawing Big Cat cubs, exposing Big Cat cubs to rough and excessive handling during public encounters, hitting tigers with riding crops, and failing to obtain adequate veterinarian care.”¹⁴³ The USDA suspended Stark’s license twice but lifted the suspension both times.¹⁴⁴ Civil society organizations, including People for the Ethical Treatment of Animals (PETA), struggle to bring citizen suits for AWA violations because the USDA both administers and enforces the AWA.¹⁴⁵ Thus, the USDA’s failure to adequately regulate enabled Stark to maintain a license until 2020, when it was ultimately revoked.¹⁴⁶

*Peta vs. Tri-State Zoological Park of Western Maryland (Tri-State Zoo)*¹⁴⁷ is another example where an AWA violation did not result in a USDA license revocation.¹⁴⁸ APHIS regulations mandate that each dealer or exhibitor retain an attending veterinarian and adequate veterinary care for its animals.¹⁴⁹ Although Tri-State Zoo acquired two veterinarians, neither had any significant experience with big cats beyond limited training in school.¹⁵⁰ Moreover, the facility maintained inadequate veterinary records, which negatively impacted future care of the big cats onsite.¹⁵¹ This was just one of the myriad of AWA violations present at Tri-State Zoo that resulted in big cat deaths at the facility.¹⁵² Despite the USDA’s awareness of the cruelties

house.gov/files/05.20.20%20Response%20from%20APHIS%20Administrator%20Shea.pdf (quoting Kevin Shea, APHIS Administrator) (“[W]e have vigorously pursued action against licensees featured in *Tiger King*, including revoking the license of [Garretson] . . . and cancelling the license of . . . [Joe Exotic] . . .”).

142. See *PETA v. Wildlife in Need & Wildlife in Deed, Inc.*, No. 4:17-cv-00186-RLY-DML, 2018 WL 8577966, at *1 (S.D. Ind. 2018).

143. *Id.*

144. *PETA*, 2018 WL 8577966, at *1; see generally Rickert, *supra* note 140 (describing what led to the ultimate revocation of Stark’s license).

145. *PETA*, 2018 WL 8577966, at *3 (“Unlike the [Endangered Species Act (ESA)], there is no citizen-suit provision within the AWA.”).

146. See Rickert, *supra* note 140 (dating the revocation of Stark’s USDA license as 2020).

147. *PETA v. Tri-State Zoological Park of W. Md., Inc.*, 424 F. Supp. 3d 404 (D. Md. 2019).

148. See generally *id.*

149. 9 C.F.R. § 2.40(a).

150. 424 F. Supp. 3d at 412.

151. *Id.* (stating that only eighty-six veterinary records were maintained for the entire zoo population in ten years; additionally, one expert stated that without medical history, it was hard to catch illnesses in big cats until they were terminal).

152. See generally *id.* at 420 (recounting how five out of nine Endangered Species Act SA animals died at Tri-State in just three years).

big cats endured at Tri-State, the threat of license revocation remained for many years.¹⁵³

Stark and *Tri-State Zoo* are just two of the many examples highlighting the USDA's AWA violations citation system's failure to adequately administer and enforce the minimum standard of animal welfare guaranteed by U.S. law.¹⁵⁴ Theoretically, the basic care for big cats at a roadside zoo and a sanctuary should not drastically differ;¹⁵⁵ however, this is not the reality. Without comprehensive inspection guidelines, uniformity in facilities is a difficult task to accomplish.¹⁵⁶ Finally, failure to discipline repeated AWA violations only incentivizes big cat enthusiasts to abuse gaps in regulation.¹⁵⁷

IV. THE ART OF PURR-SUASION: RECOMMENDATIONS

Big cats in the United States are guaranteed a minimum standard of animal welfare; however, that threshold is rarely met due to lacking federal oversight in big cat commercialization.¹⁵⁸ To address these issues, the USDA must set meaningful limits on citation numbers before an entity has its license revoked. Additionally, the USDA should amend its internal inspection guidelines by providing comprehensive standards. Finally, the USDA should advocate for the Senate to pass federal legislation to save lives, both human and cat alike. Each recommendation on its own is insufficient to protect big cats from each potential harm they face in inadequately regulated enclosures; however, the implementation of all three would create tangible change for big cat welfare in the United States.

153. See *id.* at 430–32 (detailing cruelties as isolation, injuries, barren and dirty enclosures, and boredom).

154. See generally *id.*; *Peta v. Wildlife in Need & Wildlife in Deed, Inc.*, No. No. 4:17-cv-00186-RLY-DML, 2018 WL 8577966 (S.D. Ind. 2018).

155. But see *Williams*, *supra* note 5, at 1353–54 (detailing the issue with self-identified sanctuaries that tactfully permit inspections of perfected facilities, allowing sub-par animal care in others to go undetected).

156. See *Young*, *supra* note 7, at 551 (discussing how inspectors must engage in a “good deal of guesswork” when determining whether or not an enclosure is sufficient to contain a particular animal).

157. See, e.g., Wayne Pacelle, *HSUS Undercover Investigations at Roadside Zoos in Virginia, Oklahoma Reveal Severe Abuse*, HUMANE SOC’Y OF THE U.S.: KITTY BLOCK’S BLOG (Jan. 22, 2015), https://blog.humanesociety.org/2015/01/roadside-zoos-investigation.html?credit=blog_post_022619_id10432 (describing roadside zoo owners who cut corners and exploit big cats, particularly in cub breeding, to make a profit in exhibiting the animals and subjecting the big cats to neglect).

158. See generally *supra* Part III (highlighting current gaps in regulation affecting the minimum standard of animal welfare).

A. AWA Violations and Citation Limits

First, the USDA should regulate big cat ownership by setting meaningful limits on the number of citations an individual or organization can receive before having a USDA license revoked. Additionally, the same revocation process should be automatic for certain types of AWA violations, such as operating under another entity's license¹⁵⁹ or grossly inhumane enclosures.¹⁶⁰

According to current inspection guidelines, the only defined way for the USDA to *potentially* suspend a license is if the individual or organization misses a fourth inspection.¹⁶¹ Individuals or organizations that open their doors for inspectors have little to fear, as there is always a possibility that a suspended license will not result in revocation, regardless of whether the infraction is repeated.¹⁶² Roadside zoos, sanctuaries, and other places for big cat dealers and exhibitors accrue citations for years; yet, the numbers seem to have little effect, if any, on the status of the holder's USDA license.¹⁶³ The USDA implements citations either because big cats are at risk themselves or the big cats' situations impose a risk to the general public.¹⁶⁴ The current citation system is failing.¹⁶⁵ Big cats face years of destitute living behind bars, and unwitting people are placed in the line of danger when visiting haphazard enclosures.¹⁶⁶

The USDA must demand the APHIS to set specific citation limits for both individuals and organizations who keep big tigers.¹⁶⁷ There is already a "teachable moment"¹⁶⁸ in place under USDA inspection guidelines, which grants dealers and exhibitors the opportunity to learn from their mistakes

159. *Supra* Part III (discussing Garretson operating under another entity's license after it was documented that he perpetuated animal neglect).

160. *Supra* Part III (discussing inadequate inspection guidelines that lead to inadequate enclosures for big cats).

161. ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128, at 4-12.

162. *See* Nuwer, *supra* note 11 ("During regular inspections of Joe's zoo, the USDA cited hundreds of Animal Welfare Act violations."); Wigler, *supra* note 10 ("Joe [Exotic] racked up more than 200 violations of the Animal Welfare Act while he was operating . . .").

163. *T.I.G.E.R.S. Factsheet*, *supra* note 53 (listing Doc Antle's, the operator of T.I.G.E.R.S. in South Carolina's, USDA citations dating from 1988 to 2018).

164. *See, e.g., id.* (citing Antle on March 24, 2016 for inadequate veterinary care for tigers and public safety issues the tigers could have on the public when handling them).

165. *See supra* Part III (discussing the issues with the USDA's current citation system).

166. *See, e.g., supra* notes 118-125 (providing an example about a woman who was killed by a big cat who was in an inadequate enclosure space).

167. Acknowledging that individuals and organizations have different capacities for taking care of exotic species, and thus adjusting requirements based on the type of owner is suggested.

168. *See* ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128, at 2-6 (explaining teachable moments).

and remedy them without leaving the stain of a citation on their record.¹⁶⁹ The APHIS should limit teachable moments to a one-off opportunity.¹⁷⁰ If an organization or individual fails to remedy the mistake before the next inspection, the USDA must issue a citation. Depending on the severity of a citation,¹⁷¹ if the issue is not remedied within the next date of inspection, the USDA must permanently revoke the license.

When big cats are exposed to extreme cruelties, AWA violations must result in automatic license violations. Currently, owners such as Joe Exotic, who “indiscriminately sold baby tigers to people he knew were going to bash them in the head with a hammer” in the midst of hundreds of AWA violations, are able to continue operating under a USDA license for years.¹⁷² It is only until recently that the roadside zoo featured in *Tiger King* finally closed down after years of remaining open and operating even amid rampant AWA violations.¹⁷³ Going forward, the USDA can mitigate inadequacies in big cat welfare by imposing strict limitations, resulting in immediate and irreversible license revocations.¹⁷⁴ Such strict limitations would incentivize license holders to make certain that the minimum standards of animal welfare are met.

To implement this recommendation, the USDA can engage in notice-and-comment rulemaking, as the FWS did in 2016,¹⁷⁵ because it allows for civil society organizations and the general public to voice concerns on any USDA proposed rule.¹⁷⁶ The notice-and-comment process requires developing and proposing rules for the purpose of amending current regulations as related to

169. *Id.*

170. *Contra* Antle, *supra* note 48 (supporting teachable moments over immediate AWA violations).

171. *See generally* ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128 (explaining that severity can be determined by the number of animals affected, visible signs of distress, or expert determination of inhumane standards).

172. Wigler, *supra* note 11 (quoting Brittany Peet, a PETA lawyer who testified at Joe Maldonado-Passage’s trial).

173. *See* Gregory Wallace, ‘*Tiger King*’ Zoo Closes After Feds Suspend Its License, CNN, <https://www.cnn.com/2020/08/19/us/tiger-king-zoo-closes-trnd/index.html> (noting that the zoo featured in *Tiger King* had its USDA exhibitor license suspended in August 2020, after finding multiple repeat AWA violations. The day after the license suspension, the zoo announced its closure).

174. An example of how this could look is: “Any dealer or exhibitor of big cats shall have his or her license immediately revoked if he or she is found to be breeding cubs for profit and then irresponsibly disposing of them after they have aged out of the public use.”

175. *See supra* Part I (discussing the FWS’s use of the notice-and-comment rulemaking process to close the generic tiger loophole).

176. *A Guide to the Rulemaking Process*, *supra* note 74.

the AWA.¹⁷⁷ Organizations, including PETA and the Humane Society of the United States (HSUS), have extensive knowledge about big cat needs and the problems with current USDA regulations;¹⁷⁸ thus, it is beneficial for the USDA to acquire and incorporate feedback from well-informed organizations.

Opponents of big cat regulation will likely push back on heightened big cat regulations.¹⁷⁹ Placing citation limits or implementing automatic revocation standards would negatively impact entities who profit off of big cat commercialization.¹⁸⁰ Opponents will likely argue that every zoo deals with minor noncompliance issues and this is to be expected when managing a facility with varying species of exotic animals.¹⁸¹ However, seemingly minor noncompliance issues often grow into severe AWA violations and are not resolved until big cats are already harmed.¹⁸² Enforcing AWA requirements requires the USDA to change its current views toward AWA violations and how to manage citations.

B. Comprehensive Inspection Guidelines

Currently, USDA inspection guidelines are vague and left open to a multitude of interpretations.¹⁸³ Lacking in specificity, inspectors rely on

177. See Administrative Procedure Act, 5 U.S.C. § 553(c) (noting that federal agencies must provide interested persons in the opportunity to participate in the rulemaking process by giving advance notice and allowing for public comments).

178. See, e.g., *‘Tiger King’ Shows Cruel Tiger Cub Petting Industry: Here’s What You Can Do*, PETA, <https://support.peta.org/page/3654/action/1?locale=en-US> (Jan. 14, 2021) (discussing the benefits of passing the Big Cat Public Safety Act from an animal welfare perspective); see also Kitty Block & Sara Amundson, *Bill in Congress Would Ban Private Ownership of Tigers, Lions and other Big Cats*, HUMANE SOC’Y OF THE U.S.: A HUMANE WORLD BLOG (Feb. 26, 2019), <https://blog.humanesociety.org/2019/02/bill-in-congress-would-ban-private-ownership-of-tigers-lions-and-other-big-cats.html> (noting the same aforementioned benefits).

179. *Supra* Part I.B (discussing the opponents of big cat regulation).

180. See Block & Amundson, *supra* note 178 (“At fairs and roadside zoos, for fees ranging from \$10 to \$500, members of the public can feed, play with, and take photos of themselves and others with baby tigers and lions.”); see also *Tour Pricing & Photo Packages*, DOC ANTLE’S MYRTLE BEACH SAFARI, <https://myrtlebeachsafari.com/tour-pricing-photo-packages/> (last visited Mar. 6, 2021) (pricing interaction with wildlife with photos from \$339 to \$539).

181. See, e.g., Antle, *supra* note 48 (discussing the differences between noncompliance and violations, and explaining that noncompliance issues are a simple fact of operating a zoo).

182. See James Brandon Garretson, 66 Agric. Dec. 119, 127–28, 147–49. (U.S.D.A. 2007) (explicating that tigers which went four days in between feedings were not initially reported but were later determined as malnourished and starving).

183. ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128; Brulliard, *supra* note 6 (highlighting the difference in standards between USDA inspector’s and local official’s view of the zoo).

guesswork to determine whether big cat enclosures are suitable, and often fall short of meeting the minimum standard of animal welfare.¹⁸⁴ Therefore, the APHIS must remedy the inspection guide by providing specific and comprehensive guidelines¹⁸⁵ to create a more uniform inspection system and ultimately allow for greater big cat protection.¹⁸⁶ The inspection guide is a USDA internal mechanism;¹⁸⁷ thus, it would not require notice-and-comment procedures.¹⁸⁸ Remedying the inspection guidelines requires little more than appointing APHIS agents to sift through the guidebook and make specific revisions to vague statements. Therefore, revising the guidelines is less burdensome than other initiatives requiring formal procedures to administer regulatory changes.¹⁸⁹ Since the USDA tasks the APHIS with administering AWA regulations, the APHIS is best suited to carry out this initiative.¹⁹⁰

Ultimately, the inspectors act as USDA agents and are the individuals who determine the strictness of AWA regulations.¹⁹¹ Therefore, inspectors should

184. See *supra* Part III (discussing enclosures that are too small for the safety of both cats and the public).

185. An example of specifying guidelines would be amending the language for enclosure requirements from “all animals in the enclosure are able to make normal postural adjustments” to “enclosures for tigers should be at a minimum of an acre that allows for adequate space to run, stalk, chase, and play.” See ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128, at 4-78, § 4.21.4.3 (“All animals in the enclosure are able to make normal postural adjustments”); see also *Captive Big Cat Welfare Issues Factsheet*, HUMANE SOC’Y OF THE U.S., <https://www.humanesociety.org/sites/default/files/docs/captive-big-cat-welfare-factsheet.pdf> [hereinafter *Big Cat Welfare Issues*] (“A large enclosure, preferably measured in acres rather than feet, that provides space adequate to run, stalk, chase, and play.”).

186. But cf. Antle, *supra* note 48 (noting that all zoos deal with “minor ‘non-compliance’ [sic] issues,” but that is different than an AWA violation).

187. See *USDA Guidance Portal*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/guidance> (last visited Mar. 6, 2021) (meaning that the inspectional guidelines are an internal resource for USDA employees and are not binding regulations).

188. Notice-and-comment procedures would take more time to promulgate rules than expanding the comprehensiveness of internal resources. See *A Guide to the Rulemaking Process*, *supra* note 74.

189. See *supra* Part IV.AWA Violations and Citation Limits (discussing using notice-and-comment procedure to amend citation limits prior to suspending or revoking a USDA license to own, breed, or exhibit big cats).

190. About APHIS, ANIMAL & PLANT HEALTH INSPECTION SERV., <https://www.aphis.usda.gov/aphis/banner/aboutaphis> (Feb. 3, 2021); *History of APHIS*, *supra* note 90 (listing APHIS’ “experienced [staff] of scientists, veterinarians, biologists, and other [qualified] professionals” capable of curating a comprehensive inspections guide to support animal welfare in the United States).

191. See *AWA Inspection and Annual Reports*, ANIMAL & PLANT HEALTH INSPECTION SERV., https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/awa-inspection-and-annual-reports (Feb. 5, 2021) (recognizing the animal care inspectors as employees of the USDA).

undergo mandatory training on the updated inspection guidelines to develop the skills and confidence necessary to recognize both clear and ambiguous violations when visiting a new site.¹⁹² Otherwise, inspectors will continue to approve facilities that lack both basic animal welfare standards generally and those specific to big cats.¹⁹³ Just as big cat needs differ from an elephant's, each big cat species, and subspecies thereof, has needs independent from their big cat counterparts.¹⁹⁴ Therefore, protection for all big cat species will benefit from expert design of inspection guidelines and inspector training.¹⁹⁵

Changes in the guidelines benefitting big cats are already underway at the USDA and should serve as a model for continuing the process.¹⁹⁶ For example, the APHIS released new guidance for lion and tiger enclosure heights and kick-ins at stationary facilities, indicating that adapting the inspection

192. For example, the USDA could follow a similar process to the Food and Drug Administration (FDA), which requires its investigators to have minimum education requirements and complete a six-month on-job-training using the FDA Investigational Training Manual. *Criteria Required for Nomination to the FDA International Inspection Cadre*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/field-management-directives/criteria-required> (Mar. 16, 2009).

193. See OFF. OF INSPECTOR GEN., U.S. DEP'T OF AGRIC., AUDIT REPORT 33601-10-CH, CONTROL OVER APHIS LICENSING OF ANIMAL EXHIBITORS 11 (2010), <http://www.usda.gov/oig/webdocs/33601-10-CH.pdf> [<https://web.archive.org/web/20200722133921/http://www.usda.gov/oig/webdocs/33601-10-CH.pdf>] (“APHIS’ standard practice of not disseminating [uniform] information—either directly to Animal Care inspectors or through the designated animal experts—caused at least two Animal Care inspectors to repeatedly approve exhibits that, according to APHIS’ animal expert, could use additional review, as these exhibits were similar to other exhibits at which incidents involving dangerous animals had occurred.”); see also Young, *supra* note 7, at 554 (discussing that APHIS only has one big cat specialist that inspectors may consult during visits, but many were not “availing themselves of the big cat expert” during onsite inspections).

194. See ANIMAL WELFARE INSPECTION GUIDE, *supra* note 128, at 4-78, 4-79 § 4.21.4.3 (explaining, for example, that enclosures for big cats should be large enough to allow for comfortable movement); see also Rachael Bale, *Key Facts That ‘Tiger King’ Missed About Captive Tigers*, NAT’L GEO. (Apr. 1, 2020), <https://www.nationalgeographic.com/animals/2020/03/captive-tigers-joe-exotic-tiger-king/#close> (“There are multiple subspecies of tigers in the wild, each adapted to live in a certain part of the world. A Bengal tiger is not a Siberian tiger is not a Sumatran tiger.”).

195. Cf. *Big Cat Welfare Issues*, *supra* note 185 (detailing the minimum requirements for captive big cat enclosures).

196. See *Lion and Tiger Enclosure Heights and Kick-ins Inspection Guidance*, ANIMAL & PLANT HEALTH INSPECTION SERV. (screenshot of website on file with *Administrative Law Review*), https://www.aphis.usda.gov/animal_welfare/downloads/lion-tiger-enclosure-fencing.pdf (last visited Oct. 5, 2020) (setting standards for adequate housing, sanitation, nutrition, water, and veterinary care).

guidelines is a feasible endeavor.¹⁹⁷ The new guidelines offer inspectors more specific direction in assessing AWA compliance, such as including minimum height standards.¹⁹⁸ Although it is too early to determine if the new guidelines will have a positive impact on the protection of big cats living in facilities, the better prepared inspectors are to review a facility, the more likely it is for big cats to receive adequate care.

C. Congressional Intervention: *The Big Cat Public Safety Act*

Finally, Congress should pass the Big Cat Public Safety Act¹⁹⁹ to prohibit interactions between the general public and exotic big cats, and protect both the public and tiger cubs. On February 26, 2019, Representative Mike Quigley (IL-05) introduced²⁰⁰ a revised version²⁰¹ of House Bill 1818.²⁰² Although the original version of the Act included stricter requirements for entities to meet to retain their big cats, the current version²⁰³ still places restrictions on big cat ownership, trade, and exhibition.²⁰⁴ Opponents of big

197. See *id.* (stating that the USDA's Animal Care program updated guidance to inspectors for evaluating lion and tiger enclosures at stationary facilities).

198. See *Tiger Enclosure Heights and Kick-ins Inspection Guidance*, ANIMAL & PLANT HEALTH INSPECTION SERV., https://www.aphis.usda.gov/animal_welfare/downloads/lion-tiger-enclosure-fencing.pdf (last visited Mar. 6, 2021) (“Fencing a minimum of 12 feet in height with a 3 foot angled kick-in.”).

199. BIG CAT PUBLIC SAFETY ACT, H.R. REP. NO. 116-430 (2019).

200. Press Release, U.S. Rep. Mike Quigley, Quigley Introduces Bipartisan “Big Cat Public Safety Act” (Feb. 26, 2019), <https://quigley.house.gov/media-center/press-releases/quigley-introduces-bipartisan-big-cat-public-safety-act> (quoting Representative Quigley) (“By introducing the *Big Cat Public Safety Act*, we are working to address a serious issue that causes immeasurable animal suffering and introduces inexcusable threats to human safety. State laws regarding private ownership of big cats are inconsistent or nonexistent, which is why a uniform federal law is necessary to end this dangerous industry once and for all.”).

201. See Big Cat Public Safety Act, H.R. 1380, 116th Cong. (2019).

202. H.R. 1818, 115th Cong. (2017).

203. After the completion of this Comment, H.R. 1380 died in the 116th Congress; however, it has been reintroduced as House Bill 263 in the 117th Congress with the identical text from its predecessor. See Big Cat Public Safety Act, H.R. 263, 117th Cong. (2021); see also *Big Cat Public Safety Act Reintroduced in 117th Congress Session*, TURPENTINE CREEK WILDLIFE REFUGE (Jan. 13, 2021), <https://www.turpentinecreek.org/big-cat-public-safety-act-reintroduced-in-117th-congress-session/> (“The text of this bill has not changed, it just has a new number and Congressional Session.”).

204. Compare H.R. 1818 § 3 (denying entities the right to exhibit big cats if they have, or employ anyone who has, had a license suspended or revoked by any local, State, or Federal agency within the preceding three years), with H.R. 1380 § 3 (prohibiting entities to allow the general public to come into contact with big cats being exhibited).

cat regulation, unsurprisingly, oppose this legislation²⁰⁵ because it would undoubtedly impact the ability to breed and profit off of exotic big cats, and more specifically, cubs.²⁰⁶ Proponents of the legislation argue that it will allow stricter regulation and protection of big cats in America.²⁰⁷ Additionally, passing this Act would likely lead to a domino effect, encouraging other countries with animal welfare issues to follow suit.²⁰⁸

In December 2020, House Bill 1380 passed the House and died while waiting for Senate consideration.²⁰⁹ Even with the House's prior passage, current projections report only a 5% chance of House Bill 1380's successor, House Bill 263, being enacted.²¹⁰ Nevertheless, after the release of *Tiger King*,

205. See Eric Revell, *What Is the Big Cat Public Safety Act From "Tiger King"?*, COUNTABLE (Apr. 8, 2020), <https://www.countable.us/articles/43716-big-cat-public-safety-act-tiger-king> (discussing the condemnation of the legislation by exotic big cat collectors); see also Andrew Wyatt, *Big Cat Public Safety Act: USFWS v. USDA*, LAST WORD ON WILDLIFE BLOG, <https://lastwordwildlife.com/2017/04/10/big-cat-public-safety-act-usfws-v-usda/> (June 29, 2017) (stating belief that the legislation is hypocritical because most states already prohibit ownership of big cats as pets, and legislation therefore would instead adversely affect zoos).

206. See generally H.R. 1380 (limiting contact with big cats to professionals and ensuring a barrier of at least fifteen feet between big cats and the public).

207. See Jesse Rifkin, *Popularized by Netflix's "Tiger King," Big Cat Public Safety Act Would Largely Ban Private Ownership of Tigers, Lions, Pumas, Cougars, Leopards*, GOVTRACK INSIDER (May 22, 2020), <https://govtrackinsider.com/popularized-by-netflixs-tiger-king-big-cat-public-safety-act-would-largely-ban-private-ownership-of-tigers-lions-pumas-cougars-leopards> (stating supporters' stance on promoting both animal and human welfare across the country by advocating for the enactment of the Big Cat Public Safety Act).

208. Press Release, World Wildlife Fund, WWF Statement on US Senate Introduction of the Big Cat Public Safety Act (Oct. 1, 2019), <https://www.worldwildlife.org/press-releases/wwf-statement-on-us-senate-introduction-of-the-big-cat-public-safety-act> (discussing how the tightening of domestic regulation on the ivory trade in the United States caused other countries, including China, to follow suit and the potential to duplicate this effect by passing the Big Cat Public Safety Act).

209. See H.R. 1380; Veroniza Stracqualursi & Daniella Diaz, *Invoking "Tiger King," House Passes Bill Banning Big Cat Ownership*, CNN, <https://www.cnn.com/2020/12/04/politics/tiger-king-house-bill-big-cat-ownership/index.html> (Dec. 4, 2020, 2:12 PM); *Big Cat Public Safety Act Reintroduced in 117th Congress Session*, *supra* note 203 (explaining how H.R. 1380 died in the 116th Congress, but its identical successor had been reintroduced to the 117th Congress as H.R. 263).

210. H.R. 263: *Big Cat Public Safety Act*, GOVTRACK, <https://www.govtrack.us/congress/bills/117/hr263> (last visited Mar. 16, 2021) (reporting the prognosis of the H.R. 263 by Skopos Labs, an artificial intelligence technology company that predicts the impact of policymaking); see also, e.g., Rifkin, *supra* note 207 (noting that opponents of the regulation believe that the enactment of H.R. 1380 would create administrative conflict between the DOI and the USDA. Additionally, opponents believe it would be more burdensome for smaller zoos than larger ones to comply with among the confusion of who administers the act).

the general public's overwhelming support could impact the Big Cat Public Safety Act's fate.²¹¹

The USDA's failure to adequately ensure minimum animal welfare guarantees for the commercial use of big cats demands congressional intervention.²¹² Although aforementioned legislation would not entirely eliminate America's big cat problem, it would make leaping strides toward both big cat and public safety by ending public contact with big cats.²¹³ If enacted, the Big Cat Public Safety Act will have a greater impact on the responsibilities of the FWS;²¹⁴ however, the Congressional Budget Office expects that the USDA will revise its existing regulations on licensing for entities that own, breed, or exhibit big cats.²¹⁵ Therefore, encouraging the APHIS to revise licensing requirements, set citation limits, and amend inspection guidelines would go hand in hand with the passage of the Big Cat Public Safety Act. Federal oversight is needed to limit the exploitation of big cats in America, and passing this legislation is one way to combine agency strengths to achieve such a significant goal.

CONCLUSION

America has a big cat crisis. Big cats are consistently exploited for the benefit of individual pleasure and business ventures. Without proper federal oversight, big cats will continue to suffer in silence. As the administrator and enforcement mechanism of the AWA, the USDA must amend current regulations to strengthen the AWA's effect on guaranteeing an adequate standard of animal welfare for big cats in America. House cats and Bengal tigers do not have the same needs and should not be treated the same under federal legislation.

211. Press Release, U.S. Rep. Mike Quigley, Quigley Criticizes Inadequate USDA Animal Welfare Response (June 17, 2020), <https://quigley.house.gov/media-center/press-releases/quigley-criticizes-inadequate-usda-animal-welfare-response>; Dino Grandoni, *The Energy 202: Netflix's 'Tiger King' Sends Big Cat Safety Law Roaring Back in Congress*, WASH. POST (Apr. 24, 2020, 9:47 AM), <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2020/04/24/the-energy-202-netflix-s-tiger-king-sends-big-cat-safety-law-roaring-back-in-congress/5ea1b525602ff140c1cc5fd0/> (quoting Rep. Jared Huffman) ("I wasn't being contacted by anybody about this bill [before the Netflix show].").

212. See *supra* Just Lion Around: Gaps in Regulation (detailing the gaps in USDA regulations which fail to protect big cats in the United States).

213. See Block & Amundson, *supra* note 178 (discussing how the profitability of allowing the public to interact with big cat cubs encourages unsustainable and inhumane breeding programs).

214. *Cost Estimate of H.R. 1380*, CONG. BUDGET OFF., (Mar. 5, 2020), <https://www.cbo.gov/publication/56240>.

215. *Id.*; see *supra* Part IV (exemplifying amendable USDA regulations for stricter requirements on entities who own and profit off of big cats).

The USDA must employ the APHIS to amend current regulations and guidelines to strengthen AWA protections for big cats in America. The USDA should take a holistic approach to recognize big cats' specific needs and provide additional oversight so that their lives behind bars are not filled with misery. Protecting big cats' health and safety directly correlates to protecting public health and safety.²¹⁶ Therefore, Congress must pass the Big Cat Public Safety Act. Passing this law, in conjunction with regulation revision from the USDA, will ensure that all cool cats and kittens receive the protection they deserve.

216. See *e.g.*, *supra* notes 116–124 (exemplifying how lack of care for big cats lead to the death of one young woman).