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Animal and Plant Health Inspection Service
Room 312-E, Whitten Building

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

April 10, 2023

**Re: Improved AWA Standards for Handling, Training, and Environmental Enrichment:
Comment on Advanced Notice of Proposed Rulemaking
Docket No. APHIS–2022–0022 – Submitted Via Online Docket Upload**

Dear Mr. Shea and Mr. Vilsack:

On behalf of the Animal Legal Defense Fund (“ALDF”)—the nation’s preeminent legal advocacy organization for animals—we submit the following comment in response to the U.S. Department of Agriculture Animal and Plant Health Inspection Service’s (“USDA” or “the Agency”) solicitation for comments on the Advanced Notice of Proposed Rulemaking for “Wild and Exotic Animal Handling, Training of Personnel Involved With Public Handling of Wild and Exotic Animals, and Environmental Enrichment for Species,” 88 Fed. Reg. 1151 (Jan. 9, 2023) (“ANPR”).

ALDF strongly supports USDA improving Animal Welfare Act (“AWA”) standards for the handling of wild and exotic animals, the training of staff involved in handling wild and exotic animals, and enrichment for all regulated species. However, ALDF does not support the continued use of animals in public contact encounters due to risk of zoonotic disease spread, risk of psychological and physical injury to animals, and risk of injury to humans.

This comment provides, in part, that:

- USDA should ban contact between animals and the public due to the aforementioned risks, including banning all exhibits involving direct contact, drive-through exhibits, walk-through exhibits that do not provide a complete physical barrier between human visitors and exhibited animals, as well as animal performances.
- USDA should amend its categories of contact and animals to address vague and arbitrary categorizations, and must factor in animal welfare, risk of zoonotic disease, and include birds in its categorization.
- If USDA does allow contact, it should require regulated entities to have written policies and plans for contact—including providing reports and documentation of any attacks or escapes—that are approved by the facility’s veterinarian.

- USDA should require regulated facilities to develop and implement attending-veterinarian approved environmental enrichment plans and daily enrichment schedules for all species of captive animals.
- USDA should require environmental enrichment plans to be submitted to USDA for final approval.
- USDA should promulgate clear, species-specific enrichment standards for captive animals designed to promote physical and psychological wellbeing and to allow a full range of species-appropriate behaviors.
- USDA should mandate that facilities with animals known to belong to social species house them in appropriate social groupings with members of their own species.
- Dog and cat enrichment at AWA facilities should meet or exceed standards for animal shelters set by the Association of Shelter Veterinarians. This includes daily social interaction with humans, significantly larger enclosure space, and enrichment like toys.
- USDA should require regulated entities to submit species-specific staff training plans to the Agency.
- USDA should require animal facilities' staff and veterinarian credentials to be submitted to the Agency.
- USDA should require continuing education for staff at AWA licensed facilities.
- USDA should not consider costs in this context, but regardless, the benefits of these proposals outweigh any costs.

The changes and standards that ALDF proposes below will have significant animal welfare and public welfare benefits, including the decreased risk of zoonotic disease spread, decreased risk of animal escapes and attacks, and decreased risk of psychological and physical harm to the animals. Putting these changes and standards in place will help USDA fulfill the AWA's statutory mandate of ensuring the humane treatment of animals. *See* 7 U.S.C. § 2131.

I. All Types of Contact Between Animals and the Public Should be Banned.

This comment argues that USDA should ban all types of public contact outlined in its ANPR because each type creates an unnecessary risk of zoonotic disease spread, psychological and physical injury to animals, and physical injury to humans that violates the AWA's purpose to "insure that animals intended . . . for exhibition purposes . . . are provided humane care and treatment". 7 U.S.C. § 2131(1). Zoonotic disease spread is of utmost concern for both the welfare of animals and humans, and the mere presence of human visitors near enclosures can negatively impact animal welfare. When bringing in the elements of touch, feeding, and moving through shared space with minimal to no barriers, the potential for harm to animals and the public have been repeatedly demonstrated to be too great to permit such encounters, regardless of staff supervision. This section illustrates just some of the problems with public-animal contact and provides suggestions on amendments to USDA's proposed contact categories.

A. "Full" and "protected" (direct) contact with all categories of animals should be banned.

In its ANPR, USDA proposes "full" and "protected" contact categories (hereinafter "direct contact"), defined as situations where the public is engaging in direct physical contact, such as

handfeeding, riding, photo-ops, and other touching, with exhibited animals.¹ Direct contact between animals the public risks (i) zoonotic disease spread, (ii) Psychological and physical injury to animals, and (iii) physical injury to humans that is far too great to permit such contact.

i. Risk of zoonotic disease spread is reason enough to ban direct contact between animals and the public.

The spread of zoonotic disease poses a risk of harm to animals and humans that, alone, should be enough to cease direct contact between all categories of animals² and the public. Per the CDC, “Scientists estimate that more than 6 out of every 10 known infectious diseases in people can be spread from animals, and 3 out of every 4 new or emerging infectious diseases in people come from animals.”³ Pathogens of all varieties—viral, bacterial, parasitic, fungal, and prion—spread through contact between humans and animals, causing illness and death in both the animals and humans involved.⁴

One need look no further than the disastrous toll of the COVID-19 pandemic and Highly Pathogenic Avian Flu (“HPAI”)—viruses that make headlines daily as they mutate and spread in unpredictable ways—to understand the impact infectious disease has on captive animal and human welfare. Since the COVID-19 pandemic, scientists have had to entirely reevaluate the threats posed by disease spillover, with experts recently expressing concern regarding the ability of the virus, which is widely accepted to have begun in bats, to transmit from humans back to animals and then back to humans.⁵ Each transmission during this back-and-forth process, referred to as “reverse zoonosis,” or “zooanthropanosis,” gives the virus an opportunity to mutate into more virulent strains that can infect a greater number and variety of living beings.⁶ And, with COVID-19 and other zoonotic diseases such as Ebola and Mpox, back and forth transmission can also create “reservoirs,” allowing viruses to lie dormant, sometimes for years, with the potential to be reintroduced at a later date.⁷

Both the coronavirus that caused COVID-19 and HPAI are spread in ways that make direct contact with animals highly hazardous: the coronavirus primarily through airborne particles, and HPAI through contact with saliva, mucous, and feces (either directly or through contact with

¹ Wild and Exotic Animal Handling, Training of Personnel Involved With Public Handling of Wild and Exotic Animals, and Environmental Enrichment for Species, 88 Fed. Reg. 1153 (Jan. 9, 2023). As proposed, the difference between these two categories is currently (1) the presence of staff supervision (to be addressed in Section I.E) and (2) a partial barrier (both factors present only in “protected” contact activities). Because both “full” and “protected” contact involve direct public interaction, and therefore many of the same risks, they are addressed together.

However, each individual contact scenario is different, and problems with the myriad contact scenarios that would fall under these categories will have their own specific potential for harm to the animals and humans involved.

² The configuration of USDA’s proposed animal categories will be addressed in Section II.

³ *Zoonotic Diseases*, CDC (July 1, 2021) <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html> [<https://perma.cc/G98K-UMKB/>] (attached as Exhibit 1).

⁴ *Id.*; see *Diseases That Can Spread Between Animals and People*, CDC (Aug. 29, 2022) <https://www.cdc.gov/healthypets/diseases/index.html> [<https://perma.cc/5D2B-8C95>] (providing an extensive list of diseases that spread between animals and humans) (attached as Exhibit 2).

⁵ Troy Farah, “Ping pong Zoonosis”: COVID is spreading from humans to animals and back again, SALON (Jan. 24, 2023, 12:00 PM), <https://www.salon.com/2023/01/24/ping-pong-zoonosis-is-spreading-from-humans-to-animals-and-back-again/> [<https://perma.cc/B9LB-CS7C>] (attached as Exhibit 3); see also Georgios Pappas et al., *SARS-CoV-2 as a Zooanthroponotic Infection: Spillbacks, Secondary Spillovers, and Their Importance*, 10 MICROORGANISMS, Nov. 2022 1, 12-14 (asserting the serious need for additional research into zooanthroponotic transmission, which has been “notoriously understudied”) (attached as Exhibit 4).

⁶ Farah, *supra* note 5; see also Pappas et al., *supra* note 5.

⁷ Farah, *supra* note 5; see also Pappas et al., *supra* note 5, at 12.

things contaminated with the virus, such as dust and soil).⁸ Since the COVID-19 pandemic began, there have been numerous documented infections in exhibited animals in USDA-regulated facilities across the United States, with a number resulting serious illness and even death, including of endangered species.⁹ And HPAI, currently devastating domestic and wild bird populations, is proliferating in an increasingly diverse array of mammals.¹⁰ Human vaccine makers are currently prepping in anticipation of what may come next.¹¹

Susceptibility to these viruses is disproportionately high in some families of animals frequently used in direct contact encounters. For example, members of the Mustelidae family—such as otters, ferrets, and mink—have been afflicted with both COVID and avian flu.¹² Otters are often used in animal encounters involving extremely risky direct contact—including handfeeding, petting, holding for photo-ops, and co-swimming—by multiple USDA-regulated entities in the United States.¹³

In addition to viral disease, direct contact also risks the spread of bacterial, fungal, and parasitic disease. For instance, research shows that exhibits that offer petting and feeding encounters with farmed animals are common hosts for infectious bacteria like *Salmonella* and *E. coli*.¹⁴ Infections from these bacteria have resulted in devastating illness and even the death of

⁸ *Bird Flu Virus Infection in Humans*, CDC (May 4, 2022), <https://www.cdc.gov/flu/avianflu/avian-in-humans.htm> [<https://perma.cc/GL7A-8G44>] (attached as Exhibit 5).

⁹ See Pappas et al., *supra* note 5, at 7–9 (discussing COVID-19 infections in animals in zoos around the globe); Edward Helmore, *Snow leopard at Illinois zoo dies after contracting Covid-19*, THE GUARDIAN (Jan. 8 2022), <https://www.theguardian.com/us-news/2022/jan/08/snow-leopard-dies-covid-19-illinois-zoo> [<https://perma.cc/MFF8-3ENP>] (discussing the death of captive snow leopard Milu at an Illinois zoo in 2022) (attached as Exhibit 6); David Williams, *Snow leopards die of Covid-19 complications at Nebraska zoo*, CNN (Nov. 13, 2021), <https://www.cnn.com/2021/11/13/us/coronavirus-snow-leopard-deaths-trnd/index.html> [<https://perma.cc/883S-5D5Q>] (discussing the death of three snow leopards from COVID-19 in a Nebraska Zoo) (attached as Exhibit 7).

¹⁰ See, e.g., Angela Nelson, *Bird Flu Associated with Hundreds of Seal Deaths in New England in 2022*, Tufts Researchers Find, TUFTS UNIV. (Mar. 15, 2023), <https://now.tufts.edu/2023/03/15/bird-flu-associated-hundreds-seal-deaths-new-england-2022-tufts-researchers-find> [<https://perma.cc/5EXX-96NG>] (discussing a study finding mass death from HPAI in harbor and grey seals) (attached as Exhibit 8); 2022-2023 *Detections of Highly Pathogenic Avian Influenza in Mammals*, USDA (Mar 17, 2023) <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/avian/avian-influenza/hpai-2022/2022-hpai-mammals> [<https://perma.cc/P4F5-PFQ2>] (showing USDA's ongoing data on mammalian spread in United States) (attached as Exhibit 9).

¹¹ Jennifer Rigby, *Vaccine makers prep bird flu shot for humans 'just in case'; rich nations lock in supplies*, REUTERS (Mar. 20, 2023), <https://www.reuters.com/business/healthcare-pharmaceuticals/vaccine-makers-prep-bird-flu-shot-humans-just-case-rich-nations-lock-supplies-2023-03-20/> [<https://perma.cc/U2JD-F576>] (attached as Exhibit 10).

¹² See Bas B. Oude Munnink et al., *Transmission of SARS-CoV-2 on mink farms between humans and mink and back to humans*, 371 SCIENCE, 172-177 (2021) (discussing the widespread infection of mink with the SARS-COV-2 virus and its transmission back to humans) (attached as Exhibit 11); Lisa Schnirring, *Quick takes: H5N1 avian flu in sea otter, other mammals; US, UK mull poultry vaccination*, UNIV. OF MINN. (Mar. 8, 2023), <https://www.cidrap.umn.edu/avian-influenza-bird-flu/quick-takes-h5n1-avian-flu-sea-otter-other-mammals-us-uk-mull-poultry> [<https://perma.cc/ZM4J-PY6P>] (outlining recent HPAI infections in river and sea otters) (attached as Exhibit 12).

¹³ See, e.g., *Book Us*, EXTREME ANIMALS, <http://www.extremeanimals.org/bookings.html> [<https://perma.cc/CLW5-X2LV>] (showing a USDA-licensed traveling exhibitor offering otter encounters, including feeding and swimming experiences where the exhibitor brings otters to peoples' home pools) (attached as Exhibit 13).

¹⁴ See PETA, FACT SHEET: HEALTH HAZARDS OF PETTING ZOOS, <https://www.peta.org/wp-content/uploads/2021/02/petting-zoo-factsheet.pdf> [<https://perma.cc/42PZ-QJ6R>] (last visited Apr. 1, 2023) (outlining outbreaks of disease from petting zoos around the country) (attached as Exhibit 14); *Stay Healthy at*

human visitors.¹⁵ *Salmonella* and *E. coli* infections are particularly dangerous for young children, who are frequent visitors in petting zoos, repeatedly touch their mouths, are difficult to supervise, and are particularly prone to severe symptoms and death if infected.¹⁶

Many of the animals frequently used in direct contact scenarios present the greatest risk of zoonotic disease transmission, such as rodents, primates, and small carnivores.¹⁷ Contact with primates, in particular, has been cited by the Association of Zoos and Aquariums (“AZA”) as dangerous for both the primates and humans involved. In its Policy for Animal Contact with the General Public, AZA states that “[u]nless 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.”¹⁸

Direct contact also provides an opportunity for the public to expose captive animals to diseases that may be common or asymptomatic in domesticated animals but debilitating in exotic and wild animals. For example, the parasite *Toxoplasma gondii*, common in healthy domesticated cats and able to be transmitted via contaminated soil, water, and food, may cause fatal toxoplasmosis infection in captive exotic animals.¹⁹ Kangaroos and ring-tailed lemurs, frequently subjected to direct contact at exhibitions around the country, risk death from severe neurological and respiratory illness if infected.²⁰

When the public has direct contact with animals, the risk of zoonotic disease spread is greatly increased and prohibiting direct animal contact can, as AZA admits, “markedly reduce” this

Animal Exhibits, CDC (July 13, 2022), <https://www.cdc.gov/healthypets/specific-groups/stay-healthy-animal-exhibits.html> [<https://perma.cc/G5PM-24H8>] (discussing risks of *E. coli*, *Salmonella*, and other disease at farmed animal exhibits) (attached as Exhibit 15).

¹⁵ PETA: PETTING ZOOS, *supra* note 14; Paul Sisson, *State pays out more than \$4 million to settle lawsuit stemming from E.coli outbreak*, SAN DIEGO UNION TRIBUNE (June 5, 2022), <https://www.sandiegouniontribune.com/news/health/story/2022-06-05/fair-board-settles-2019-e-coli-lawsuit> [<https://perma.cc/D9DE-ZDS9>] (covering an *E. coli* outbreak at a petting zoo which resulted in multiple illnesses and the death of a two-year-old) (attached as Exhibit 16).

¹⁶ Indeed, even in supervised environments, staff at petting zoos run by a variety of entities have been found unable to adequately supervise well enough to keep children safe. For example, a 2008 study conducted by Michigan State University’s National Food Safety and Toxicology Center found that in the seventeen petting zoos they evaluated across Michigan, half of the children observed touched their faces, 42 percent touched an animal’s mouth, three were observed ingesting water from an animal’s water trough, one child placed their mouth on a fence post, and one child was observed ingesting goat feces. Kathleen E. Werden & Paul C. Bartlett, *Compliance with Hygiene Recommendations for Human animal Contact at Petting Zoos*, 2 MICH. J. OF PUB. HEALTH 19, 19 (2008) (attached as Exhibit 17). More than half these events occurred under staff supervision. *Id.* at 25.

¹⁷ See, e.g., ASS’N OF ZOOS AND AQUARIUMS [hereinafter “AZA”], POL’Y FOR ANIMAL CONTACT WITH THE GENERAL PUBLIC, https://assets.speakcdn.com/assets/2332/policy_for_animal_contact_with_the_general_public_1997.pdf [<https://perma.cc/D97U-AVER>] (attached as Exhibit 18) (outlining just some of the risks associated with direct contact with various exhibited animals).

¹⁸ *Id.*

¹⁹ Karen Shapiro, et al., *Environmental transmission of Toxoplasma gondii: Oocysts in water, soil and food*. 12 FOOD AND WATERBORNE PARASITOLOGY (2019) (attached as Exhibit 19).

²⁰ Mallory Pfeifer, *Toxoplasmosis in a Herd of Kangaroos*, TEXAS A&M VETERINARY MED. DIAGNOSTIC LAB’Y (Jan. 3, 2019), <https://tvmdl.tamu.edu/2019/01/03/toxoplasmosis-in-a-herd-of-kangaroos/> [<https://perma.cc/9BYV-LBJC>] (attached as Exhibit 20); Guido Rocchigiani et al., *Toxoplasmosis in Captive Ring-Tailed Lemurs* (Lemur catta), 11 PATHOGENS 1142 (2022) (attached as Exhibit 21); See, e.g., Animal EDventure Park & Safari (@animaledventures), TIKTOK, www.tiktok.com/@animaledventures?lang=en [<https://web.archive.org/web/20230322221016/https://www.tiktok.com/@animaledventures?lang=en>] (showing a USDA-licensed exhibitor allowing the public to have direct contact with kangaroos and other animals highly susceptible to zoonotic disease) (attached as Exhibit 22).

risk.²¹ In the interest of everyone’s health, no one other than trained staff and volunteers should be permitted to have direct contact with exhibited animals.

ii. Direct contact risks serious psychological and physical injury to animals.

In addition to illness, allowing the public to have direct contact with animals can cause undue stress, negatively alter natural behaviors, and can result in physical injuries from improper handling and feeding.

Researchers have found that even the most minimal contact with the public (purely auditory and visual) can affect animal behavior. This “visitor effect” has been studied most extensively in primates, where fearful or aggressive reactions to visitor presence have been found in a variety of species.²² Spurred by stress, these interactions can also have lasting impacts on primates individually and in their community. Evidence shows that human-animal encounters can cause “increased social tension and aggression” within primate groups, and that prolonged stress can result in abnormal and self-injurious behavior.²³ These negative reactions are associated not only with perceived threat, but lack of choice: animals react negatively when they cannot escape from unwanted human presence.²⁴ And, in direct contact scenarios, that lack of choice is even greater.²⁵

Of particular concern in direct contact encounters is the use of infant and young animals. AWA regulations require that “[y]oung 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.”²⁶ Violations of this regulation in the form of cub encounters have been the basis for multiple USDA enforcement proceedings, yet direct contact with young animals continues at exhibitions around the country.²⁷ For example, at bear ranches, such as Yellowstone Bear World in Idaho, bear cubs are taken away from their mothers and forced to be held and

²¹ AZA: POL’Y FOR ANIMAL CONTACT, *supra* note 17.

²² See, e.g., Lynda Birke, *Effects of Browse, Human Visitors and Noise on the Behaviour of Captive Orang Utans*, 11 ANIMAL WELFARE 189, 198–200 (2002) (attached as Exhibit 23) (finding that adult orangutans covered their heads and adults and infant orangutans clung to each other more during high visitor times).

²³ Jocelyn M. Woods, *The Social Rank of Zoo-Housed Japanese Macaques is a Predictor of Visitor-Directed Aggression*, 9 ANIMALS 316 1, 2 (2019) (accepting the visitor effect and exploring the interplay between visitor presence and social hierarchy) (attached as Exhibit 24); Kathleen N. Morgan & Chris T. Tromborg, *Sources of Stress in Captivity*, 102 APPLIED ANIMAL BEHAV. SCI. 262, 263–264, 279–280 (2007) (attached as Exhibit 25).

²⁴ See AZA, THE ACCREDITATION STANDARDS & RELATED POL’YS 86–91 (2023), <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf> [<https://perma.cc/YM5Z-BG46>] (“Wherever possible provide a choice for animal program participation and train handlers to recognize signs of comfort, stress, and distress of animals in presentations (e.g., methods in place to allow animals to retreat to refuge areas for touch tanks or contact yards, voluntary crating, evaluation of willingness/readiness to participate by handler, animals trained to signal a choice to end presentations, etc.)”) (attached as Exhibit 26).

²⁵ Morgan & Tromborg, *supra* note 23, at 279–280; see generally, Kate Silver, *Giving Agency to Ambassador Animals*, AZA (Apr. 13, 2022), <https://www.aza.org/connect-stories/stories/zoo-aquarium-ambassador-animal-choice-control?locale=en> [<https://perma.cc/9JW4-C8KD>] (discussing a recent shift by many AZA accredited facilities to promote animal choice in public encounters) (attached as Exhibit 27).

²⁶ 9 CFR § 2.131(b)(3).

²⁷ See, e.g., In Re: Zoocats, Inc., 68 Agric. Dec. 737, 745 (U.S.D.A. July 27, 2009) (“Respondents failed to handle tiger cubs as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort, in willful violation of section 2.131(a)(1) of the Regulations (9 C.F.R. § 2.131(a)(1) (2004))” [now 9 C.F.R. § 2.131(b)(1)]).

bottle-fed by humans for photo-ops.²⁸ Bears have been seen crying and attempting to escape human visitors as they are passed from person to person.²⁹ Bears have also been observed suckling on staff members' chins, fingers, etc.—a behavior often present in animals who are attempting to self-soothe after “premature separation” from their mothers.³⁰ Problems with cub encounters have been particularly well-documented in the context of big cat cub petting—a practice now prohibited under the Big Cat Public Safety Act.³¹ The exploitation of young animals for direct contact happens with a variety of species at exhibitions around the United States.³²

Even if infants aren't being used, direct contact experiences often involve animals who are averse to human contact by nature, putting them at increased risk for psychological harm that may be difficult for even well-trained staff to recognize. Sloths, for example (currently in Category 2 of USDA's proposed animal categories), are often used in direct contact encounters, yet they are solitary, nocturnal animals who can become easily stressed from human interaction.³³ Typically slow moving, sloths can still react quickly and in ways that injure humans when stressed, such as the recent sloth bite to a teenager at an exotic animal exhibition in Michigan that resulted in two “deep puncture” wounds.³⁴ The majority of animals in USDA's proposed categories would not choose to interact with an unfamiliar human, and like sloths, animals such as porcupines, caviars, and armadillos, all of whom are currently in USDA's proposed Category 3, are nocturnal and should not be disturbed during daytime hours.

Additionally, with increased levels of stress, animals are more likely to become sick, further increasing the risk of zoonotic disease spread.³⁵

Beyond the psychological and physical risk of injury from stress and improper handling, in direct contact encounters involving feeding, animals may also suffer psychological and physical harm. Often, animals in these encounters become extremely overfed, perform abnormal behaviors for food, or are fed an improper diet (whether provided by the facility or from visitors bringing in outside food), negatively impacting their health.³⁶ Visitors at these encounters are

²⁸ See *PETA Complaint Prompts OSHA Penalty Against Yellowstone Bear World*, PETA, <https://investigations.peta.org/yellowstone-bear-world/#video> [<https://perma.cc/87RN-RNNZ>] (last visited Apr. 2, 2023) (attached as Exhibit 28).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Big Cat Public Safety Act Signed Into Law*, ALDF (Dec. 20, 2022), <https://aldf.org/article/big-cat-public-safety-act-signed-into-law/> [<https://perma.cc/JVA3-CH2K>] (attached as Exhibit 29); see also *United States v. Lowe*, No. 20-CV-0423-JFH, 2021 WL 6133795, at *3 (E.D. Okla. Dec. 23, 2021) (outlining Endangered Species Act violations by former exhibitor Jeff Lowe, including for “removing Big Cat cubs and Ring-Tailed Lemur pups from their mothers prematurely” and “forcing Big Cat cubs and Ring-Tailed Lemur pups to engage in public playtime events.”).

³² See e.g., *Franklin Safari Baby Animal Room*, FRANKLIN DRIVE THRU SAFARI, <https://www.franklinsafari.com/baby-animal-room> [<https://perma.cc/Y49U-E523>] (last visited Apr. 5, 2023) (attached as Exhibit 30).

³³ *Situation Critical: 'Sloth Encounters' Gets Slammed by the Feds*, PETA (Dec. 13, 2022), <https://www.peta.org/blog/sloth-encounters-cited/> [<https://perma.cc/4MBU-4KR6>] (discussing exploitation of sloths by New York exhibitor “Sloth Encounters”) (attached as Exhibit 31).

³⁴ Cole Waterman, *Sloth bites teen during visit to Michigan pet store, ruining lifelong dream*, MLIVE (Mar. 16, 2023), <https://www.mlive.com/news/saginaw-bay-city/2023/03/sloth-bites-teen-during-visit-to-michigan-pet-store-ruining-lifelong-dream.html> [<https://perma.cc/BHJ5-DXSU>] (attached as Exhibit 32).

³⁵ See *supra* Section I.A.i.

³⁶ See, e.g., *infra* Section I.B.i–ii (discussing problems and illnesses associated with public feeding of animals).

frequently given inappropriate bread products and corn to freely feed animals, which can result in a variety of acute and long-term illnesses, and death.³⁷

Direct contact should be banned due to the risk of psychological stress and physical injury to animals, particularly infant animals and animals who are averse to human contact.

iii. Direct contact risks serious injury to the public.

Due to the stressful and unpredictable nature of direct contact interactions, and as USDA acknowledged,³⁸ physical injuries to the public are a major concern in these encounters. Even absent public participation, staff, who are (or should be) trained to interact with animals under their care, are seriously injured by animals at USDA-regulated facilities.³⁹ When involving the untrained public, the risk is too great. Injuries to the public come not only from large carnivores and other animals currently classified by USDA as “Category 1,” but serious bites and scratches can occur with all types of animals. Injuries involving small mammals currently categorized by USDA in categories 2 and 3 are a regular occurrence at facilities across the country. In 2020, public police records obtained by ALDF show that a child reportedly sustained a bite by a “monkey” in the “baby room” at exhibitor Jason Clay’s Franklin Drive Thru Safari in Texas.⁴⁰ A young staff member was reportedly present during the incident and did not intervene or offer help.⁴¹ The child’s mother was advised by a Safari representative that the animal was unvaccinated at the time of the incident.⁴² These incidents happen at a variety of USDA-regulated facilities. For example, in 2022, the Austin Aquarium in Texas was given back-to-back critical citations by the USDA for lemur and kinkajou bites to children.⁴³ Because of the unpredictable nature of both the animals and humans involved in these interactions, staff supervision is not a solution, and to protect the public, direct animal interactions should be banned.

iv. If any direct contact is permitted, it should only be with domesticated farmed animals, with a written policy and plan approved by the attending veterinarian in place.

While it is ALDF’s position that all public contact with all animals should be banned due to the unnecessary risks to animals and humans, if any contact is permitted, it should be limited to

³⁷ See, e.g., Peter D. Constable, *BVSc (Hons), MS, PhD, DACVIM, Grain Overload in Ruminants*, MERCK & CO. <https://www.merckvetmanual.com/digestive-system/diseases-of-the-ruminant-forestomach/grain-overload-in-ruminants> (discussing the potential for grain overload from overfeeding of products like corn (a frequent staple at petting encounters) in ruminants, which can result in fatal illness) (attached as Exhibit 33).

³⁸ 88 Fed. Reg. 1152.

³⁹ See, e.g., *Demanding Investigation into Texas Exhibitor Jason Clay for Ongoing OSHA Violations*, ALDF (Apr. 7, 2022), <https://aldf.org/case/demanding-investigation-into-texas-exhibitor-jason-clay-for-ongoing-osh-violations/> [<https://perma.cc/U994-S478>] (discussing an OSHA complaint filed by ALDF regarding exhibitor Jason Clay after an employee at his East Texas Gator Park facility shared videos from an animal attack on social media) (attached as Exhibit 34).

⁴⁰ See CFS Report, Incident Report, and Confidential Supplement from Robertson County Sheriff’s Office (Aug. 6, 2020) (reporting an incident at Jason Clay’s Franklin Drive Thru Safari “baby room” where allegedly an unvaccinated monkey jumped onto the back of a child and bit her) (attached as Exhibit 35).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *PETA INVESTIGATES: Guests Bitten by Animals During ‘Encounters’ at Austin Aquarium*, PETA (Dec. 5, 2022), <https://investigations.peta.org/austin-aquarium/> [<https://perma.cc/YYS7-B8WG>] (attached as Exhibit 36). These bites were just those in USDA’s records. PETA’s undercover investigator learned of numerous bites to visitors by lemurs and kinkajous. *Id.*

domesticated farmed animals, with specific assessments, rules, and procedures in place (in an approved written policy) to ensure interactions are as safe as possible for all involved. USDA should require incorporation of the AZA’s “Recommendations for Developing a Facility Animal Ambassador Policy,” particularly the recommendations for: Animal Health and Wellbeing, Human Health and Safety, Taxon Specific Protocols, Staff Training, and Review of Facility Policies.⁴⁴ Importantly, beyond including requirements for sanitation, physical safety, and the like, the AZA includes in its recommendations: giving animals a choice in whether to participate in programs (and staff training to ensure they can recognize signs of stress, comfort, distress, etc.), assessments of the psychological needs of each individual animal, ongoing assessment of individual animal “behavior, demeanor, and welfare” throughout the animal’s life to assess whether the “animal ambassador” role is appropriate, and establishing procedures for approving individual animals for the “role.”⁴⁵ In addition to adopting the AZA’s recommendations, USDA should specifically require:

1. No animal feeding unless done in conjunction with specifically trained staff. This will assist in preventing excessive and improper feeding.
2. A limit on the number of humans within an enclosure, considering the ratio of animal to people, enclosure size, and specific needs of the taxon and individual animals involved. This will work to minimize animal stress, aid staff in assessing animal comfortability, and keep visitor numbers at a level able to be adequately monitored by staff.
3. All children under 13 to be supervised by a guardian, including requiring the guardian enter any animal enclosure with the child(ren) they are responsible for.
4. No riding on animals. Prohibiting riding will protect animals’ psychological and physical health and protect humans from injury.

The written plan approved by the attending veterinarian should include the following for all animals involved:

1. The risks posed by the animals to humans and how they will be mitigated.
2. The risks posed both physically and psychologically to the animals and how that will be mitigated.
3. For disease transmission, documentation of which zoonotic diseases can be transmitted to humans from animals and vice-versa, together with a biosecurity plan to minimize risk of disease transmission.
4. Susceptibility to stress and any type of effect the contact could have on natural species behavior.
5. An assessment of any particularized considerations and needs for individual animals.⁴⁶

These documents should be regularly reviewed and updated, and should be submitted to USDA for approval annually, or at least every three years for review during licensing.

⁴⁴ AZA: ACCREDITATION STANDARDS, *supra* note 24, at 85–91.

⁴⁵ *Id.* at 88–91.

⁴⁶ While we only provide this outline for domesticated farmed animals, compliance with the recommendations in AZA’s “Recommendations for Developing a Facility Animal Ambassador Policy,” specific rules for contact, and a written plan approved by the attending veterinarian should be required for all contact with all animals with which USDA permits contact.

B. Drive-through exhibits that allow contact with animals should be banned.

i. Drive-through exhibits are dangerous to captive animals.

Interactive drive-through exhibits (which the Agency currently splits in its ANPR between the “protected” and “walk-/drive-through” categories) should be banned because they are dangerous to animals in myriad ways. *See* 7 U.S.C. § 2131(1) (purpose of AWA is to “insure that animals intended . . . for exhibition purposes . . . are provided humane care and treatment”). This section provides a non-exhaustive list of ways in which drive-through exhibits pose a harmful risk to the exhibited animals.

First, human visitors (and whatever animals they bring in the car with them, which can include dogs and other pets) can bring in outside pathogens to the drive-through enclosures. The outside pathogens can harm animals housed within the enclosure and spread among the exhibited animals. For example, the easily spread pathogen clostridium can cause painful disease and death in ruminants.⁴⁷

Second, exposure to visitors and their pets can cause animals increased stress, which in turn suppresses the animals’ immune systems, development, and reproductive function, and increases the risk of illness and death.⁴⁸ Many species experience heightened stress when constantly exposed to public view⁴⁹—and drive-through exhibits limit the ways in which animals may avoid public view. In addition, some species view humans as predators and will suffer stress from any human interaction; similarly, some species may suffer stress from sensing proximity to barking, growling, or even just the presence of dogs.⁵⁰

Third, drive-through exhibits that do not include permanent barriers between cars and animals creates conditions in which cars can—and do—run over and kill animals. For example, the former longtime head of animal care at Olympic Game Farm said that cars run over animals in the drive-through exhibit “occasionally.” This includes a “peacock or a seagull [who] will get under a tire to get a piece of bread and accidentally get run over,” as well as a visitor who had “run over a yak calf recently.”⁵¹ In a deposition regarding the Olympic Game Farm, a USDA inspector testified that cars running over animals “sounds like a serious problem.”⁵² However, she was not aware that such activities occurred at Olympic Game Farm, because the deaths did not occur while she was inspecting the facility, and the facility did not report the deaths (or, at least, the reason for them) to USDA.⁵³

⁴⁷ *See* Katharine M. Simpson et al., *Clostridial Abomasitis and Enteritis in Ruminants*, 34 VET CLIN N. AM. FOOD ANIMAL PRAC. 155–84 (2018) (attached as Exhibit 37).

⁴⁸ Jessica M. Keay et al., *Fecal Glucocorticoids and Their Metabolites as Indicators of Stress in Various Mammalian Species: A Literature Review*, 37(3) J ZOO & WILDLIFE MED. 234, 234 (2006) (attached as Exhibit 38); E. Möstl & R. Palme, *Hormones are Indicators of Stress*, 23 DOMESTIC ANIMAL ENDOCRINOLOGY 67, 68 (2002) (attached as Exhibit 39).

⁴⁹ *See* Kerry V. Fanson et al., *Comparative Patterns of Adrenal Activity in Captive and Wild Canada Lynx (Lynx Canadensis)*, 182 J COMPAR. PHYSIOLOGY B 157, 163 (2012) (finding captive Canada lynx have been found to have approximately double the levels of stress hormones as their wild counterparts) (attached as Exhibit 40).

⁵⁰ For this reason, even if the Agency does not ban drive-through exhibits, it should prohibit certain species from being housed in such enclosures. For example, Canada lynx—very elusive animals who experience stress from public observation—would be inappropriately housed in a drive-through exhibit. *See id.*

⁵¹ Transcript of Dep. of Clay Richmond at 165:21-166:12, *Animal Legal Def. Fund v. Olympic Game Farm et al.*, No. 3:18-cv-06025 (W.D. Wash.) (taken Feb. 12, 2021) (excerpts attached as Exhibit 41).

⁵² Transcript of Dep. of USDA Inspector Diane Forbes at 67:12-68:16, *Animal Legal Def. Fund v. Olympic Game Farm et al.*, No. 3:18-cv-06025 (W.D. Wash.) (taken Dec. 16, 2019) (excerpts attached as Exhibit 42).

⁵³ *See id.*

Fourth, drive-through facilities often expressly or implicitly allow public feeding—*i.e.*, visitors to feed the animals in the enclosure from their car.⁵⁴ Even if public feeding is not allowed, drive-through facilities generally do not observe every moment of a car's passage through the enclosure, creating the opportunity for visitors to feed animals whatever they have in their car (including candy and other inappropriate food). Regardless of the level of encouragement of public feeding, exhibitor facilities cannot properly regulate and restrict animals' food intake.

For instance, hoofstock and brown bears fed bread at Olympic Game Farm risk—and likely experience—health harms from grain overload.⁵⁵ Indeed, USDA inspectors have identified the massive amount of bread that tourists feed to the animals in the drive-through portion of Olympic Game Farm as highly problematic.⁵⁶ In response, Olympic Game Farm has told USDA inspectors that the facility limits the public feeding of bread as a snack.⁵⁷ But in reality, the facility allows each car to purchase *four loaves* to feed the animals during a visit through the drive-through exhibit,⁵⁸ Olympic Game Farm staff consistently fail to monitor visitors' interactions with the animals in the exhibit,⁵⁹ and—most concerning of all, Olympic Game Farm records show it intentionally reduces providing the bears meat (and the veterinarian prescribed medicine supplements that accompany a meat meal) during the summer so as to increase the bears' motivations for tourist-thrown bread.⁶⁰ In short, the facility is not taking steps to ensure that public feeding of bread only amounts to a “snack” for the animals.

Similarly, at Yellowstone Bear World, visiting humans are encouraged to throw bread and other “treats” at the bears while driving through the exhibits.⁶¹ The unrestricted food thrown at the bears varies from chocolate chip cookies to tortilla chips to coffee.⁶² As a result, the bears at

⁵⁴ For example, Yellowstone Bear World in Idaho, and Olympic Game Farm allow the public to feed animals from cars and other vehicles. *See, e.g., Wildlife Excursion*, YELLOWSTONE BEAR WORLD, <https://yellowstonebearworld.com/experiences/curator-tours> [<https://perma.cc/XD3E-U8CG>] (last visited Apr. 8, 2023) (attached as Exhibit 43); *Visit the Farm*, OLYMPIC GAME FARM, <https://olygamefarm.com/visit-the-farm/#visit> [<https://perma.cc/F7L2-5H2Z>] (last visited Apr. 8, 2023) (attached as Exhibit 44).

⁵⁵ *See* Garret R. Oetzel, *Diagnosis and Management of Subacute Ruminant Acidosis in Dairy Herds*, 33 VET CLIN FOOD ANIMAL 463 (2017); Nathan F. Meyer & Tony C. Bryant, *Diagnosis and Management of Rumen Acidosis and Bloat in Feedlots*, 33 VET CLIN N. AM. FOOD ANIMAL PRAC. 481 (2017); Emily Snyder & Brent Credille, *Diagnosis and Treatment of Clinical Rumen Acidosis*, 33 VET CLIN N. AM. FOOD ANIMAL PRAC. 451 (2017); Alexandra Hund & Thomas Wittek, *Abomasal and Third Compartment Ulcers in Ruminants and South American Camelids*, 34 VET CLIN OF N. AM. FOOD ANIMAL PRAC. 35 (2018) (collectively attached as Exhibit 45).

⁵⁶ *See* USDA inspection reports and accompanying documents associated with inspections performed by Tom Lecroy (attached as Exhibit 46) (“it is strongly advised that a gradual transition to a more species appropriate snack be implemented.”).

⁵⁷ *See id.*

⁵⁸ Olympic Game Farm Board Meeting Minutes (May 20, 2015) (attached as Exhibit 47).

⁵⁹ *See, e.g.,* June 15, 2022, redacted Complaint to APHIS (discussing how visitors spent a bunch of time trying to convince OGF staff to come to the drive-through area and check on a dead baby llama and distressed mother llama, showing that no staff were already in the area monitoring human-animal interactions) (attached as Exhibit 48).

⁶⁰ ALDF Mot. for Summ. J. at 19-21, Dkt. 160, Animal Legal Def. Fund v. Olympic Game Farm et al., No. 3:18-cv-06025 (W.D. Wash.) (filed Mar. 25, 2021) (excerpt attached as Exhibit 49)

⁶¹ In fact, Yellowstone Bear World has promoted and facilitated this public feeding in violation of Idaho state regulations. *See* Idaho Dept. of Fish & Game, Notice of Violation (July 11, 2022) (attached as Exhibit 50).

⁶² *See* July 25, 2022, Complaint to APHIS from PETA Foundation, at 10 (attached as Exhibit 51).

Yellowstone Bear World appear very unhealthy and overweight; conditions that could lead to health harms such as diabetes and arthritis.⁶³

Unrestricted feeding of bread or grains at drive-through facilities—something that appears to be an inevitable characteristic of the model—is harmful to the animals there. For example, unregulated feeding of a non-seasonal diet to bears—especially one that includes bread—can lead to overweight animals who have increased aggression and increased stereotypical behavior.⁶⁴ Bread-heavy diets at drive-through facilities contribute to insulin resistance, obesity, diabetes, and increased arthritis severity, among other problems.⁶⁵

ii. Drive-through exhibits are dangerous to humans.

Beyond the harm to animals, drive-through exhibits pose dangerous risks to humans. Without a permanent physical barrier between cars and animals, visitors can roll down their windows and invite physical interaction with the animals in the drive-through exhibit. The interactions create risks of harm in at least two ways. First, the animals can intentionally or unintentionally injure visitors by biting, poking with their antlers, or otherwise hitting humans in the cars.⁶⁶ For example, at Olympic Game Farm, a zebra bit and dragged a three-year-old boy out of his car, causing him to need dozens of stitches on his arm.⁶⁷ Second, sick animals can spread zoonotic diseases to visitors in cars, just as the human visitors can spread zoonotic diseases to the animals.⁶⁸

C. Walk-through exhibits that do not create barriers with animals should be banned.

i. Walk-through exhibits are dangerous to captive animals and human visitors.

Walk-through exhibits without barriers between animals and the human visitors are dangerous to the animals. Humans infected with zoonotic diseases can pass them along to the animals, causing the animals to get sick or die.⁶⁹ Similarly, even visitors who are not sick can carry pathogens into the exhibit, spreading disease. This can also happen with walk-through exhibits using partial barriers—they allow humans to throw or drop pathogen-laced objects into enclosures, such as recent video-captured examples of children dropping and throwing sippy

⁶³ See Matt Lorelli, *Fat Bear Struggles to Waddle Across Road (Video)*, UNOFFICIAL NETWORKS (Dec. 8, 2022), <https://unofficialnetworks.com/2022/12/08/fat-bear-waddle-road/> [<https://perma.cc/Q7AB-YCB4>] (attached as Exhibit 52).

⁶⁴ See JENNIFER C. WATTS, CASE STUDY: SEASONAL DIETS FOR BROWN BEARS (*URSUS ARCTOS*) AT BROOKFIELD ZOO—SUCCESSFUL IMPLEMENTATION LED TO REDUCED WEIGHT AND IMPROVED BEHAVIOR (attached as Exhibit 53).

⁶⁵ Decl. of Dr. Lisa Harrenstien ¶¶ 59-63, Dkt. 159, Animal Legal Def. Fund v. Olympic Game Farm et al., No. 3:18-cv-06025 (W.D. Wash.) (signed Mar. 24, 2021) (attached as Exhibit 54).

⁶⁶ See USDA inspection materials from Tom Lecroy, *supra* note 56; Email from Robert H. Morris to Michael H. Morris & Lindsay Morris (Feb. 7, 2018, 7:21:42 AM) (attached as Exhibit 55) (describing having “the head of a buffalo partially in [the] car,” a “young elk’s head was completely in the car and bit my polar fleece shirt,” and “a zebra stuck his nose close to mine to get the bread”).

⁶⁷ Lynette Meachum, *SEQUIM: Zebra drags boy from car*, KITSAP SUN (Mar 27, 2001) https://products.kitsapsun.com/archive/2001/03-27/0018_sequim_zebra_drags_boy_from_car.html [<https://perma.cc/M8H7-TH9S>] (attached as Exhibit 56).

⁶⁸ See Email from Ray to Olympic Game Farm (Aug. 13, 2018, 8:07 PM) (attached as Exhibit 57) (expressing concern about disease spread because an “animal’s saliva spattered into [his] eye” while he fed the animal bread).

⁶⁹ Can et al., *Dealing in deadly pathogens: Taking stock of the legal trade in live wildlife and potential risks to human health*, 17 GLOB. ECOLOGY & CONSERVATION e00515 (2019) (attached as Exhibit 58).

cups they had been drinking into enclosures.⁷⁰ These pathogens could come from animals who the visitors interacted with in other exhibits, or that the visitors picked up from anywhere else outside the exhibits.⁷¹ Even animals who do not get sick can suffer the consequences of disease spread—for example, because French molt is highly contagious in birds, its arrival in a walk-through aviary can lead a facility owner to quarantine and kill off the entire flock.

These types of exhibits are also dangerous to the visitors. Humans can contract zoonotic disease from the animals with whom they interact.⁷² In addition, captive wild animals can attack human visitors in walk-through exhibits, causing bodily injury.⁷³

Outside of disease spread, constant exposure to visitors can harm the animals in a walk-through exhibit by keeping them in a state of constant stress. Many species of animals experience increased stress when exposed to other species that they perceive as predators. In addition, many species of animals require opportunities to escape from public view, as a way to reduce their stress.⁷⁴ Walk-through enclosures that increase the proximity of human visitors to animals in an exhibit reduce or eliminate the ability for animals to escape from public view, keeping the animals' stress at elevated levels. Increased stress can cause immunosuppression and make animals more susceptible to illness, injury, and death.⁷⁵

a. In particular, walk-through aviaries known as “budgie barns” should be banned.

One common and especially problematic form of walk-through exhibits is a room or house that encloses large number of parakeets, lorikeets, or similar birds—often called “budgie barns.” Current AWA standards do not adequately provide protections for birds housed in high numbers and subject to public contact. Exhibitors offer “budgie barns” or “parakeet rooms” (collectively referred to as “budgie barns” here) as walk through aviaries that hold high numbers of birds in tight proximity—so high that it becomes impossible for facilities to differentiate between all the individuals and identify health issues. These conditions, coupled with constant interactions with humans call for special protective standards to avoid the birds' inevitable suffering and death and to avoid spread of zoonotic diseases. For the reasons described below, USDA should ban budgie barns and eliminate the massive loss of animal life they cause.

⁷⁰ Tia Loca 1993 (@tia_loca_1993), TIKTOK (Jan. 23, 2023), https://www.tiktok.com/@tia_loca_1993/video/7191962853937777966 [https://web.archive.org/web/20230322211958/https://www.tiktok.com/@tia_loca_1993/video/7191962853937777966] (showing a child throwing a sippy cup into a sea lion enclosure, reportedly at the Houston Zoo) (attached as Exhibit 59); Tia Loca 1993 (@tia_loca_1993), TIKTOK (Jan. 23, 2023) https://www.tiktok.com/@tia_loca_1993/video/7192045027542011182 [https://web.archive.org/web/20230409012913/https://www.tiktok.com/@tia_loca_1993/video/7192045027542011182] (showing a follow up video of the sea lions playing with the thrown sippy cup) (attached as Exhibit 60); cashinthecity (@cashinthecity), TIKTOK (Feb. 17, 2023) www.tiktok.com/@cashinthecity/video/7201294648013491502 [<https://web.archive.org/web/20230409013401/https://www.tiktok.com/@cashinthecity/video/7201294648013491502>] (showing an orangutan, reportedly at the Los Angeles Zoo, fashioning a tool to retrieve a sippy cup dropped by a child which the orangutan then drinks from) (attached as Exhibit 61).

⁷¹ CDC: *Animal Exhibits*, *supra* note 14 (warning of the spread of known or reemerging diseases such as *E. coli*, *Cryptosporidium*, and *Salmonella* at animal exhibitions).

⁷² *Id.*

⁷³ See, e.g., *Child attacked by lemur at Jackson County petting zoo, father says*, FOX5 ATLANTA (Mar. 21, 2022), <https://www.fox5atlanta.com/news/child-attacked-by-lemur-at-jackson-county-petting-zoo-father-says> [<https://perma.cc/KD3U-RHZQ>] (attached as Exhibit 62).

⁷⁴ See Fanson, *supra* note 49.

⁷⁵ See *id.*

1. Budgie barns, as high-density bird enclosures with public contact, are a recipe for bird and human injury and illness.

Exhibitor facilities with “budgie barns” dot the country. A cursory search of the internet finds these enclosures at facilities from Grand Rapids, Michigan to Tacoma, Washington.⁷⁶ While facilities may provide visitors a common experience, such as the ability to enter an enclosure with hundreds of birds and feed them a stick of seeds, the facilities do not understand how to care for the birds and treat them inconsistently. For example, the Friends of the Bergen County Zoo in Paramus, New Jersey describes a “budgie encounter” with “hundreds of beautiful budgies” that is only open seasonally during the summer months.⁷⁷ In contrast, Clyde Peeling’s Reptiland in Allenwood, Pennsylvania describes the budgies in its walk-through Parakeet Landing as “adaptable birds” that can “endure climates that range from very hot and dry to cold and rainy. Visitors are often surprised to find them flying about the aviary on even cold winter days!”⁷⁸ In another contrast, some facilities, like the National Aviary in Pittsburgh, require entry tickets and have a staff overseeing public contact between humans and birds, while others, like Pymatuning Deer Park in Jamestown, Pennsylvania (“Pymatuning”), allow visitors to walk through its “budgie barn” unsupervised for the majority of the day.⁷⁹ In short, facilities that include “budgie barns” do not know how to maintain them or to properly care for the birds they contain. Because of the inherent harm they cause the birds they contain, USDA should accordingly ban budgie barns—and if not, prescribe strict standards for how facilities should maintain them.⁸⁰

2. Zoonotic disease and other illnesses are prevalent in budgie barns.

Budgie barns and similar walk-through aviaries create a high risk of zoonotic disease and other illnesses. For example, during a site visit of Pymatuning as part of the lawsuit *PETA et al. v. Reigleman Enterprises et al.*, experts observed a featherless parakeet in the budgie barn. The bird’s condition could indicate carrying the highly infectious disease “French molt”—for which the typical response is to quarantine all birds until they die.

⁷⁶ E.g., *Budgie Aviary*, JOHN BALL ZOO, Grand Rapids, <https://jbzoo.org/experiences/zoo-adventures/>, [<https://perma.cc/RRP3-DM8W>] (over 150 budgies in walk-through exhibit) (last visited Apr. 9, 2023) (attached as Exhibit 63); *Budgie Buddies*, POINT DEFIANCE ZOO & AQUARIUM, Tacoma, <https://www.pdza.org/animals/budgie-buddies/> [<https://perma.cc/Y9XA-8D8L>] (last visited Apr. 9, 2023) (attached as Exhibit 64).

⁷⁷ See *Budgie Exhibit*, FRIENDS OF THE BERGEN COUNTY ZOO, Paramus, <https://www.friendsofbergencountyzoo.org/seasonal> [<https://perma.cc/H54J-QJWG>] (last visited Apr. 9, 2023) (attached as Exhibit 65).

⁷⁸ *Parakeet Landing*, CLYDE PEELING’S REPTILAND, <https://reptiland.com/experience/general-admission/parakeet-landing/> [<https://perma.cc/FL3W-X52A>] (last visited Apr. 9, 2023) (attached as Exhibit 66).

⁷⁹ See Answer ¶ 90, *PETA et al. v. Reigleman Enters. et al.*, No. 2:21-cv-488 (W.D. Pa.) (filed June 22, 2021) (“Defendants admit visitors may feed the parakeets. . . . The Budgie Barn is typically supervised by two Pymatuning Deer Park staff members. For the first and last hour of the Park’s operating hours, there is one *attending* supervising the Budgie Barn.”) (emphasis added) (attached as Exhibit 67).

⁸⁰ ALDF strongly believes that because of the large amount of death the budgie barns cause, the USDA should ban the practice. If USDA declines to ban such facilities, it should at a minimum promulgate standards that: (1) Set maximum numbers of birds allowed in a budgie barn; (2) Require any public feeding to be limited to food type and amount that would be appropriate for nutritional needs and diet (*i.e.*, does not overfeed birds with “junk food”); (3) Require sufficient space and ventilation in the budgie barn to minimize the risk of spread of respiratory illness; (4) Require facilities provide alternative space for birds that cannot or should not be part of a budgie barn because, *inter alia*, they are too young, old, sick, otherwise vulnerable, or aggressive; (5) Require the facility to perform a necropsy on every bird who dies in a budgie barn; (6) Require timed entries for the public; (7) Set maximum number of humans allowed into a budgie barn at one time; (8) Require handwashing and footwear coverings before entering a budgie barn; and (9) Require staff presence every time a member of the public enters a budgie barn.

Respiratory harms are also common occurrences in high density budgie barns. Accumulating feather dust is a contributor to respiratory illness.⁸¹ In addition, avian chlamydiosis is a contagious and zoonotic disease that can spread rapidly through fecal matter, causing an entire flock to die off.⁸² Avian chlamydiosis can also spread from parakeets to humans, in whom it can cause a range of responses, from flu-like symptoms to severe pneumonia.⁸³ The best management practice for avoiding the spread of avian chlamydiosis is to isolate sick birds in an enclosure separate from the budgie barn, disinfect their enclosures, and place them under veterinary supervision.⁸⁴

Budgie barns also create ripe conditions for the spread of avian gastric yeast, which is a harmful megabacteria that takes residence in the gastrointestinal tract of birds.⁸⁵ Asymptomatic birds carrying the megabacteria can join a high-density flock and then spread disease to affect the entire flock.⁸⁶ Birds who contract the megabacteria and become symptomatic repeatedly regurgitate and, as a result, suffer and die from aspiration pneumonia.⁸⁷

Accordingly, the USDA should ban budgie barns. If it declines to do so, the Agency should promulgate standards that provide sufficient diet, space, density, restrictions on visitor and staff handling and interactions, and necropsy requirements to avoid zoonotic diseases and other illnesses.

3. Widespread injury and death are part and parcel of budgie barn operations.

Birds housed in budgie barns are constantly threatened with injury and death. Human visitors step on birds, the doors that allow humans in and out of the enclosures crush the birds or enable escapes, and the birds attack each other. Even if the birds do not die from immediate trauma, they are kept in such high numbers and density that facility staff fail to notice physical harm—as a result, the birds die from treatable injuries.

Pymatuning Deer Park provides a prime example of the injuries and death that confront birds housed in high density budgie barns. As part of the *PETA et al. v. Reigleman Enterprises et al.* litigation, Pymatuning admitted that visitors crush birds.⁸⁸ The flock die-off is so severe that Pymatuning orders 150-200 “keets” for its budgie barn every two to four years—in other words, its budgie barn operations see 200 birds die every few years.⁸⁹ For instance, in 2019, Pymatuning bought 200 baby parakeets from bird dealer McDonald Bird Farm LLC.⁹⁰ Within three years, Pymatuning’s records showed only “50-75” parakeets remaining in the budgie barn.⁹¹

⁸¹ Anne-Marie Ionescu et al., *Birds of a feather: an uncommon cause of pneumonia and meningoencephalitis*, BMJ CASE REP. 2016 (attached as Exhibit 68).

⁸² *Avian chlamydiosis factsheet for bird carers and suppliers*, N.S.W. HEALTH 1 (2016) (attached as Exhibit 69).

⁸³ *Id.*

⁸⁴ *Id.* at 2.

⁸⁵ Shalini Radhakrishnan, *Avian Gastric Yeast*, VETERINARY PARTNER (Mar. 24, 2021) <https://veterinarypartner.vin.com/default.aspx?pid=19239&catId=102911&id=10158446> [<https://perma.cc/6KT5-9JGV>] (last visited Apr. 9, 2023) (attached as Exhibit 70).

⁸⁶ The risk of new birds bringing in disease is particularly high with budgie barns because facilities see massive die-offs of the birds in short amounts of time and must regularly replenish the flock. For example, Pymatuning buys hundreds of birds for its budgie barn every couple of years. See Pymatuning Records (attached as Exhibit DW5).

⁸⁷ Radhakrishnan, *supra* note 85.

⁸⁸ See Answer ¶ 90, (“Defendants admit that members of the public have stepped on parakeets in the past, but it is a rare occurrence.”); Radhakrishnan, *supra* note 85.

⁸⁹ See Pymatuning Records from PETA et al. v. Reigleman Enters. et al., No. 2:21-cv-488 (W.D. Pa.) (attached as Exhibit 71).

⁹⁰ See *id.* at D000183 (McDonald Bird Farm LLC invoice).

⁹¹ See Pymatuning Animal Inventory – March 31, 2022 (attached as Exhibit 72).

A common cause of emergency injury and death for small birds like parakeets in captivity is egg binding in females. Egg binding becomes increasingly likely when birds receive a poor diet, such as a “junk food” diet of millet and seed, which causes calcium and vitamin A deficiency.⁹² It is a reproductive disease where bound eggs will not pass from the reproductive tract, compressing organs, prolapsing reproductive organs, and obstructing the ability to urinate and defecate. This can increase the likelihood of bacterial infection, cause severe pain, and become a life-threatening condition if not treated at the appropriate time.⁹³ And treatment itself is intensive: veterinarians treat egg binding by either manual expulsion of the egg or surgery. Such treatment requires constant attention to the bird and subsequent oral supplements and antibiotics—activities that can only occur when the bird is isolated from the larger flock.

With the widespread injury and death occurring as part of budgie barn operations, the Agency must ban this type of exhibit. Allowing budgie barns to continue in their current fashion would violate the purpose and text of the AWA. *See* 7 U.S.C. § 2131(1) (finding AWA enacted “to insure that animals intended . . . for exhibition purposes . . . are provided humane care and treatment”).

4. The Association of Zoos & Aquariums recommends sufficient spacing, separate spaces for birds in need of special management, and geriatric planning.

In a 2020-2025 planning document, the AZA states that with the growing popularity of budgie barns, “there are specific points that must be addressed.”⁹⁴ The AZA’s primary concern appears to be that with such large flocks, facilities run the risk of not properly providing individualized care for the birds who need it.⁹⁵ Accordingly, the planning document recommends “space for proper housing of surplus birds in addition to breeding spaces”⁹⁶ and “geriatric planning.”⁹⁷ Without surplus space, there is nowhere for injured birds to recover, or ill birds to isolate and avoid spreading disease to the rest of the flock. If the USDA declines to ban budgie barns, the USDA should at minimum incorporate these recommendations—along with several other requirements—into a proposed rule.

D. Performances should be banned.

Animal performances should be banned. They risk harm and death to humans and to animals. Performances expose the public and animal owners to dangerous wild animals.

⁹² The risk of egg binding increases when large numbers of males and females are kept together, as happens in budgie barns.

⁹³ B. Sudhakar Reddy & S. Sivajothi, *Egg binding in Budgerigar (Melopsittacus undulatus)—an emergency condition*, 3 INT’L J. OF AVIAN & WILDLIFE BIO. 352 (2018) (attached as Exhibit 73).

⁹⁴ AZA, PARROT TAXON ADVISORY GROUP, 5th Ed. (2020-2025) (attached as Exhibit 74).

⁹⁵ *Id.* at 10 (“As with any species though, individuals may behave differently in different situations.”).

⁹⁶ *Id.* at 11. Such spacing should help reduce injuries from overcrowding, including from aggressive birds harming each other. *Id.* at 12.

⁹⁷ *Id.* at 12. The AZA document explains that psittacines like budgies have longer lifespans, which further highlights the fatal attraction of budgie barns—which cause facilities like Pymatuning to order multiple hundreds of birds every 2-4 years.

For example, the exhibitor facility Predators of the Heart at one point in time made traveling performances with cougars and wolves.⁹⁸ These animals can be deadly. Indeed, in late 2021, three wolves escaped Predators of the Heart and killed a neighbors' dog.⁹⁹

Moreover, traveling performances are very hard to regulate. Generally, USDA does not know where the animals are, does not know their conditions during transport, and the exhibitor is likely not qualified to care during travel. For example, Robert Sawmiller, a longtime owner of a traveling menagerie operated for over a decade with a USDA license, through 2021, even though a municipal court had in 2016 convicted him under an animal welfare law.¹⁰⁰ The curtain eventually came down for Sawmiller after the State of Ohio discovered that he improperly transported brown bears in a way that killed several of them, and after ALDF sued USDA over its decision renewing Sawmiller's USDA license.¹⁰¹ Because of the mobile nature of performances like Sawmiller's, and because USDA does not appear to have the capabilities to fully receive and share information from non-federal regulators, it is very easy for traveling menagerie owners to harm animals without USDA catching wind.

Banning animal performances would be in step with how states are trending. Many states and jurisdictions are imposing animal performance bans. To name just a few among many: California banned using orcas in theatrical shows in 2016,¹⁰² Illinois and New York banned the use of elephants in traveling shows in 2017,¹⁰³ Colorado banned the use of elephants, big cats, bears, and other animals in circuses in 2021,¹⁰⁴ and Kentucky banned the use of endangered species in circuses in 2022.¹⁰⁵ This trend shows that there is no justification for performances, and certainly no justification that, in light of the AWA purpose to "insure . . . humane care and treatment," outweighs the risk of harm and death to the exhibited animals and viewing public. Accordingly, USDA should not allow animal performances.¹⁰⁶

⁹⁸ See Complaint at 19, *Borlin et al. v. Predators of the Heart et al.*, No. 22-2-00526-29 (Wash. Sup. Ct., Skagit Cty.) (filed Jul. 7, 2022) ["Predators of the Heart Lawsuit Complaint"] (attached as Exhibit 75). ("We have traveled to schools and libraries within our community . . ."). To do so, Predators of the Heart claimed that the canids they possess and use in performances are wolf-dog hybrids. *Id.* at 120 n. 1 ("Although the Application sometimes describes Predators' animals as 'wolfdogs,' it also frequently describes them as 'wolves'"). In actuality, the animals are wolves. See *Animal Legal Def. Fund v. Olympic Game Farm, Inc.*, 591 F. Supp. 956, 963-64 (W.D. Wash. 2022) (finding that wolves, including at Olympic Game Farm, including those acquired from Predators of the Heart, are ESA-listed wolves). USDA should promulgate rulemaking, or at minimum guidance, restricting regulated facilities from re-naming wolves as "wolfdogs" or wolf-dog hybrids to avoid regulation.

⁹⁹ See *Predators of the Heart Lawsuit Complaint*, *supra* note 98.

¹⁰⁰ See Letter from USDA to Robert Sawmiller (Jul. 28, 2021) (attached as Exhibit 76).

¹⁰¹ See Complaint, *Animal Legal Defense Fund v. Vilsack et al.*, 21-cv-623 (D.D.C.) (filed Mar. 9, 2021) (attached as Exhibit 77).

¹⁰² Madison Park, *California bans killer whale theatrical shows, breeding*, CNN (Sept. 14, 2016), <https://www.cnn.com/2016/09/14/us/orca-killer-whales-california-ban/index.html> [<https://perma.cc/76JW-NGKW>] (attached as Exhibit 78); see CAL. FISH & GAME CODE § 4502.5.

¹⁰³ See 720 ILL. CODE § 5/48-11 (Illinois); N.Y. AGRI. & MKTS. § 380 (New York).

¹⁰⁴ See COLO. REV. ST. ANN. § 33-1-126.

¹⁰⁵ See 301 KY. ADMIN. REGS. 2:082 (as of Feb. 1, 2023).

¹⁰⁶ If USDA decides to continue to allow animal performances—and it should not—the agency should make clear that any performance can only occur in jurisdictions without traveling animal show bans.

E. If USDA permits any form of contact, contact categories should be amended to prevent arbitrary distinctions and vagueness.

If USDA permits contact with any animals, all categories of contact should be amended to provide consistency, clarity, and ensure that animal welfare is also prioritized during each type of contact.

First, supervision is currently only mentioned in protected contact scenarios.¹⁰⁷ To comply with the regulatory requirements of 9 CFR § 2.131, generally, and specifically 9 CFR § 2.131(2)(d) (“A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact”), all types of contact should be supervised.¹⁰⁸ As noted above, the risk of illness and injury to humans and animals is serious in every contact scenario (and under the current scheme, illness and injuries regularly occur even with alleged staff supervision). If any type of contact, such as drive-through exhibits without barriers, makes actual staff supervision impossible, this type of contact cannot be permitted.

Second, the “protected contact” category is vague, and currently at odds with the phrase’s common usage in the captive animal world. “Protected contact” is widely used to describe a handling policy where there is always a barrier between staff and the animals they are caring for and is generally reserved for animals that would be considered highly physically dangerous for humans to share space with.¹⁰⁹ The current definition USDA provides does not fit this model and may cause confusion for regulated entities. The category should be renamed to prevent this confusion (e.g., “partial barrier contact”) and it should be clearly explained what this category of contact means, including where staff will be, how the public is accessing the animals (reaching over a barrier, through, etc.), and what kind of contact may occur (petting, feeding from stick, etc.). Notably, clearly defining this category may require further breaking up of the category.

Third, currently, drive-through exhibits are split between two categories: protected and walk-/drive-through. As outlined in Section I.B, drive-through exhibits have a myriad of welfare and safety concerns that occur regardless of the apparent “type” of drive-through exhibit.¹¹⁰ Splitting between categories is likely to be confusing for regulated entities, and depending on any standards that are put in place, may cause inconsistencies in regulation. Drive-through exhibits should be placed in their own category, and any standards must address all concerns that come up with such exhibits.¹¹¹

¹⁰⁷ 88 Fed. Reg. 1153.

¹⁰⁸ Additionally, regulations require the “[h]andling 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,” “[d]uring 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,” and that “[y]oung 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,” among other requirements that cannot be met without adequate supervision. 9 CFR §§ 2.131(b)(1), (c)(1), (3).

¹⁰⁹ See *Protected Contact Elephant Management*, PAWS, https://www.pawsweb.org/protected_contact.html [<https://perma.cc/FTM9-JHY8>] (last visited Apr. 5, 2023) (providing the definition of protected contact in the context of elephant care) (attached as Exhibit 79).

¹¹⁰ See, e.g., *supra* Section I.B.ii (“Even if public feeding is not allowed, drive-through facilities generally do not observe every moment of a cars passage through the enclosure, creating the opportunity for visitors to feed animals whatever they have in their car (including candy and other inappropriate food). Regardless of the level of encouragement of public feeding, exhibitor facilities cannot properly regulate and restrict animals’ food intake.”).

¹¹¹ And, as logically follows, walk-through exhibits should also be an individual and clearly articulated category.

II. All Categories of Animals Should be Reconfigured if USDA Moves Forward with Categorizing Animals for Contact Purposes.

If the USDA continues to permit contact with animals and moves forward with categorization, the proposed categories must be amended to:

- A. include animal welfare as at least an equal consideration in categorization;
- B. consider zoonotic disease in terms of “risk” factor, not just physical injury;
- C. include Aves—an entire class of animals covered by the Act and not represented in the categories;
- D. recategorize animals in categories as they currently exist to prevent arbitrary inconsistencies and discrepancies.

A. Animal welfare must be an equal consideration in the creation of categories.

The purpose of the Animal Welfare Act as it applies to exhibitions is to “insure that animals intended . . . for exhibition purposes . . . are provided humane care and treatment”. 7 U.S.C. § 2131(1). To carry out this purpose, the Secretary “shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by . . . exhibitors.” 7 U.S.C. § 2133. While USDA does acknowledge in its ANPR that physical injury to humans can result in grievous harm to animals (i.e., “euthanasia” to help a human),¹¹² configuring animal categories solely off potential harm to humans (that could lead to harm to animals) is not in the spirit of the Act. To fulfill the Act’s purpose, animal welfare must be at the forefront of AWA regulation, and as the categories currently stand, the dynamic nature of captive animal welfare is absent, with focus placed on human welfare.

For example, as discussed in Section I.A.ii, solitary, nocturnal animals such as sloths and armadillos, currently placed in Category 2, are at great risk of suffering from direct contact due to stress tolerance and natural behaviors. And animals such as kangaroos and lemurs, also currently in Category 2, are at a greater risk of becoming gravely sick from bacterium common in the domesticated cats in human homes. If categories are put in place, these animals would benefit from being put in a heightened risk category (assuming that standards are put in place to offer greater protection).

As such, a reanalysis of the current categories should be done to make harm to animals due to stress, improper handling, and disease equal factors in the analysis to ensure animal welfare is prioritized.

B. Zoonotic disease must be considered when categorizing by “risk”—to both humans and animals.

Relatedly, the categories proposed by USDA are currently divided by risk of bodily harm due to the potential for animal attack, but zoonotic disease risk has been entirely left out of the analysis. As discussed in Section I, many animals across all proposed categories, including many in categories 2 and 3, considered by the USDA to be safer for human interaction, are at high risk for becoming ill with serious disease from humans, giving humans serious disease, or both. Animals that are currently in categories 2 and 3 with increased potential for zoonosis and reverse

¹¹² 88 Fed. Reg. 1152.

zoonosis should be moved up accordingly, including all primates and other animals specifically addressed in Section I.

C. Aves should also be included in categories.

If any contact is permitted and categories are crafted, birds, as regulated animals who are also used in all types of contact, should be included in the categorization. First, the handling of Aves requires special knowledge due to their needs psychologically, physically, and the risk they may become injured or injure handlers.¹¹³ Secondly, the risk of disease transmission with various birds is significant, including the risk of spreading HPAI.¹¹⁴ For the birds and the public, all species of Aves should be categorized, with their welfare and the welfare of the public considered.

D. Categories, even as they currently exist, must be amended to correct arbitrary designations creating inconsistencies and discrepancies.

If USDA moves forward with permitting contact and placing animals into categories, categories must not only be reorganized to incorporate the above considerations (animal welfare, zoonotic disease risk, and the inclusion of Aves), but categories should be adjusted to avoid arbitrary designations that are already present in USDA’s currently proposed groupings, including (but not limited to):

1. Placing all big cats in Category 1. The way the proposed categories are currently written, big cats such as lions and tigers would fall into Category 2 (“other exotic felines (not otherwise listed in any category)”), while cheetahs, panthers, bobcats, lynxes, and clouded leopards are in Category 1. This distinction is arbitrary as the risk of physical harm to humans is not lessened when interacting with these particular cats who have been left out of Category 1. As such, all big cats should be moved up to Category 1, as they have the “capability or potential to cause severe injury, dismemberment, or death to the public or staff.”¹¹⁵
2. Placing camels in Category 1. Camels are large animals able to inflict fatal injury to humans. Recent incidents illustrate the dangers of human-camel interactions, including an incident in Tennessee where a camel freed himself from a petting zoo and killed two people (and was subsequently killed by police) and another involving a camel at a Minnesota zoo who dragged an employee 15-feet by the head, causing injury severe enough to require an airlift to the hospital.¹¹⁶ Placing camels in Category 2, described as animals that are capable or have the potential to cause injuries that are “serious but not

¹¹³ See ALDF Comment Establishing AWA Standards for Birds: Comment on Proposed Rule Docket No. APHIS-2020-0068 (attached without internal exhibits as Exhibit 80).

¹¹⁴ See also Section I.C.i.a (discussing disease transmission in budgie barns).

¹¹⁵ 88 Fed. Reg. 1152.

¹¹⁶ Alex Meier, *Camel kills 2 men, attacks police car after escaping enclosure on Tennessee farm*, ABC 13 (Mar. 11, 2022), <https://abc13.com/camel-attack-kills-two-obion-tn-shirley-farms/11643554/> [<https://perma.cc/4DUV-TDCK>] (attached as Exhibit 81). Shirley Farms was subsequently given a critical citation by USDA for improper structural strength of the camel’s enclosure. USDA, INSPECTION REPORT (attached as Exhibit 82); Anna Haecherl, *Zoo owner bit by camel, dragged 15 feet airlifted to Minnesota hospital, officials say*, USA TODAY (July 14, 2022), <https://www.usatoday.com/story/news/nation/2022/07/14/man-bit-camel-airlifted-zoo-employee/10057378002/> [<https://perma.cc/PM6T-3U6F>] (attached as Exhibit 83).

likely to be severe or life-threatening,” does not accurately reflect the danger of fatal injury when interacting with camels.¹¹⁷

3. Removing all wild and exotic animals from Category 3. For example, capybaras should be placed in at least Category 2 as they are large enough to seriously injure someone if panicked and stressed. This is also true for the currently vaguely identified “large cervids,” who are lumped into one group in Category 3, though they could severely injure or kill a human. Putting these animals in a Category 3 along with small, domesticated farmed animals is arbitrary, and they should be moved to categories that accurately reflect risk.
4. Removing horses and domestic bovines from Category 3. Currently, horses and domestic bovines are lumped in with domesticated farmed animals in Category 3. These animals are large and able to do serious physical harm to humans during interactions, and therefore should be placed in a heightened category that accurately reflects risk. Relatedly, the proposed category currently states “Animals in this category would include farm animals as defined by the AWA regulations in 9 CFR 1.1 (such as domestic bovines, sheep, goats, llamas, horses, domestic pigs, and rabbits, **among others**).”¹¹⁸ This list is open-ended and vague, and all categorized animals should be specifically listed to avoid confusion among regulated entities.

E. Wolf-dog hybrids should not be downlisted in categories or fully excluded from this “wild and exotic animal handling” rulemaking.

Some commenters have asked USDA to not regulate activities with “wolfdogs” because, *inter alia*, “[t]hey should not be classified as an exotic animal of any sort because they are not one . . . [t]hey are not dangerous, confused, or vicious animals,” and “[w]olfdogs do not deserve to be further demonized by haters spreading misinformation.”¹¹⁹ These types of comments are misplaced.

There is a massive incentive for licensees to inaccurately categorize wolves as wolf-dog hybrids to avoid regulation. In much of the country, wolves are listed as endangered, and the Endangered Species Act (“ESA”) (and related state endangered species acts) impose prohibitions on possession and transfer of wolves. Facilities possessing wolves will rename the wolves as hybrids as a way to carry out activities they want to carry out, as well as to avoid liability. For example, Predators of the Heart identified its canids as wolf-dog hybrids as part of its transfer of animals to Olympic Game Farm¹²⁰—even though those animals were later found by a court to be ESA-protected wolves.¹²¹ Facilities carry out this sleight of hand because USDA currently has no way of evaluating whether the animals are wolves or wolf-dog hybrids; it simply accepts the word of the licensee when the licensee submits its inventory during an inspection. For example, Olympic Game Farm historically identified its animals as wolves until ALDF sued it for violating the ESA. After the suit began, Olympic Game Farm changed its inventory reporting to

¹¹⁷ 88 Fed. Reg. 1153.

¹¹⁸ *Id.* (emphasis added).

¹¹⁹ *See, e.g.*, Comment from Anonymous, comment ID APHIS-2022-0022-0060 (received Jan. 18, 2023) available at <https://www.regulations.gov/comment/APHIS-2022-0022-0060>.

¹²⁰ The transfer documents expressly state, “These are not pure wolves, but they are wolf hybrids” and repeatedly refer to the animals as “wolfdogs” or “hybrids.” *See* USDA Record of Acquisition, Disposition or Transport of animals from Predators of the Heart to Olympic Game Farm, Dec. 1, 2012 (attached as Exhibit 84).

¹²¹ *Animal Legal Defense Fund v. Olympic Game Farm et al.*, 591 F. Supp. 3d 956, 963 (W.D. Wash. 2022).

say that the wolves were instead wolf-dog hybrids¹²²—and USDA seemed to accept that recategorization.¹²³ But as noted above, a federal court later held that the animals that Olympic Game Farm recategorized were in fact ESA-protected wolves.

Even if a facility’s self-identification were trustworthy, the animals are still dangerous. To give just one example, in 2021, animals at Predators of the Heart (described by Predators of the Heart as “wolfdogs”) escaped the facility enclosures and killed a neighbor’s dog.¹²⁴

III. Exhibitors Should be Required to File a Written Report of any Escape or Injury to Animal or Human within 48 hours.

A written report should be required for all escapes and all injuries to humans and animals to (1) accurately track incidents to protect animal and human safety and welfare and (2) help USDA assess regulated entities for enforcement and licensing purposes. All injury reports should be written at the time of injury and should be reported to USDA within 48 hours. Escapes should also be reported to USDA within 48 hours. Updated documentation regarding the escape or injury—information on found animals, medical records, etc.—should be submitted in a final report no later than 30 days from the time of the incident. If an animal death occurs, USDA should require that a necropsy be conducted, and the report submitted along with other documentation. As in the AZA’s policy for reporting “Accidents or Incidents Involving Potential Injury or Welfare,” the report should also include “what corrective actions are being taken by the institution” as a result of the incident.¹²⁵

IV. USDA Should Adopt General Enrichment Requirements for All Species.

A. Enrichment plans should be required for all species of captive animals.

ALDF supports USDA’s contemplated addition of regulatory requirements to address species-specific environmental enrichment for all regulated animals. USDA should require regulated facilities to develop and implement environmental enrichment plans and daily enrichment schedules for all species of captive animals protected by the AWA. Environmental enrichment is an essential animal welfare practice that enhances the quality of captive animals’ lives by identifying and providing the environmental stimuli necessary for physical and psychological wellbeing.¹²⁶ It is achieved through increasing the physical, temporal, and social complexity of captive environments taking into account the animals’ behavioral biology, natural

¹²² Compare Mar. 21, 2017 Inspection Report with Aug. 6, 2019 Inspection Report (both attached as Exhibit 85). ALDF filed its Endangered Species Act suit against Olympic Game Farm in December 2018.

¹²³ See Aug. 6, 2019 Teachable Moment (attached as Exhibit 86) (referring to the animals as wolf-dog hybrids and requiring that Olympic Game Farm now comply with dog standards under the AWA for the animals).

¹²⁴ See *Predators of the Heart* Lawsuit Complaint, *supra* note 98; see also Section I.D (describing Exhibit 75).

¹²⁵ AZA: ACCREDITATION STANDARDS, *supra* note 24, at 111.

¹²⁶ Cynthia Fernandes Cipreste et al., *How to Develop a Zoo-Based Environmental Enrichment Program: Incorporating Environmental Enrichment into Exhibits*, in *WILD MAMMALS IN CAPTIVITY*, 2ND ED., 171, 171 (Kleiman, Thompson & Baer, eds., 2010) (attached as Exhibit 87).

history, and individual characteristics.¹²⁷ This increased complexity allows animals to explore, problem-solve, and exercise choice, expanding the diversity of their behaviors.¹²⁸

Environmental enrichment plans advance captive animals' physical and psychological wellbeing and encourage species-appropriate behaviors. Encouraging these behaviors through enrichment has many scientifically documented animal welfare benefits: it measurably reduces abnormal and self-abusive behaviors, increases activity and learning ability, helps animals cope with stressors,¹²⁹ improves health, and allows for earlier detection of illnesses.¹³⁰ Conversely, animals housed in barren enclosures with inadequate enrichment suffer physical and psychological distress, and often exhibit abnormal, "stereotypic" behaviors, which are caused by deficiencies in captive housing that induce frustration, stress, fear, or physical discomfort.¹³¹ These behaviors include pacing, rocking, aggression, and self-injurious behaviors like overgrooming, and self-mutilation.¹³²

The USDA has a statutory duty to "insure" that captive animals "are provided humane care and treatment[.]"¹³³ Further, the AWA requires the USDA to promulgate standards to govern the humane handling, care, treatment, and transportation of warm-blooded animals used in regulated activities.¹³⁴ Because enrichment is essential to animal wellbeing, USDA has a statutory duty to require all regulated facilities to provide AWA-protected captive animals with species-specific enrichment that encourages species-appropriate behaviors and advances individual animals' physical and psychological wellbeing.

B. USDA should require facilities to provide comprehensive, daily enrichment.

To provide humane care, regulated facilities must give all captive animals comprehensive, species-appropriate enrichment that allows them to express a full range of normal behaviors.¹³⁵

¹²⁷ Kathy Carlstead & David Shepherdson, *Alleviating stress in zoo animals with environmental enrichment*, in *THE BIOLOGY OF ANIMAL STRESS: BASIC PRINCIPLES AND IMPLICATIONS FOR ANIMAL WELFARE*, 337, 337 (GP Moburg and J.A. Mench, eds., 2000) (attached as Exhibit 88); *See About Enrichment*, THE SHAPE OF ENRICHMENT INC., <https://theshapeofenrichmentinc.wildapricot.org/> [<https://perma.cc/D57G-6KRT>] (last visited Apr. 9, 2023) (attached as Exhibit 89).

¹²⁸ Carlstead & Shepherdson, *supra* note 127, at 337, 345.

¹²⁹ A survey of scientific studies documenting psychological responses to enrichment by Carlstead and Shepherdson found that "environmental enrichment can be an effective way of reducing captivity-induced stress by providing animals with increased behavioral options for responding to threatening or aversive stimulation in their surroundings." Carlstead & Shepherdson, *supra* note 127, at 349.

¹³⁰ *Id.* at 337–348; Scott W. Line et al., *Simple Toys Do Not Alter the Behavior of Aged Rhesus Monkeys*, 10 *ZOO BIOLOGY* 473, 483 (1991) (attached as Exhibit 90); Ronald Swaisgood & David Shepherdson, *Environmental enrichment as a strategy for mitigating stereotypies in zoo animals: a literature review and meta-analysis*, in *STEREOTYPIC ANIMAL BEHAVIOUR: FUNDAMENTALS AND APPLICATION TO WELFARE* 256, 260 (Mason and Rushen, eds., 2006) (attached as Exhibit 91).

¹³¹ G. Mason et al., *Why and how should we use environmental enrichment to tackle stereotypic behaviour?* 10 *APPLIED ANIMAL BEHAVIOR SCI.* 163, 164–165 (2007) (attached as Exhibit 92).

¹³² *Id.* at 165–169.

¹³³ 7 U.S.C. § 2131(1).

¹³⁴ 7 U.S.C. § 2143(a)(1)–(2).

¹³⁵ *See, e.g.*, USDA, FINAL REPORT ON ENVIRONMENT ENHANCEMENT TO PROMOTE THE PSYCHOLOGICAL WELLBEING OF NONHUMAN PRIMATES, 8 (1999) ("There is a consensus emerging in the literature on primate enrichment that 'species-typical' or 'species-appropriate' behavior should be the goal of enhancement programs, and that it is important for the animal to be able to express a 'normal repertoire' or a 'full range' of normal behavior--a range that is complete and balanced.") (attached as Exhibit 93).

USDA’s experience with non-human primate environmental enhancement programs is a key example of why the Agency should specify minimum requirements for different categories of enrichment. A decade after the 1985 amendments to the AWA creating performance-based standards for non-human primates were passed, USDA conducted a survey of Animal Care employees to gauge how effective the standards were at promoting primate psychological wellbeing.¹³⁶ USDA inspectors reported that without specific legal requirements to address different elements of a species’ natural environment and behavior, many primate enhancement programs “consisted of only one or two types of enrichment, such as feeding of treats or provision with a simple rubber toy, in an otherwise barren, stimulus-poor environment.”¹³⁷ This finding is consistent with ALDF and other animal advocacy groups’ experience that without specific, legally enforceable enrichment requirements, many small exhibitors house captive animals in unstimulating, barren environments. For example, in *People for Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Md., Inc.*, the court observed that the two lemurs at the facility, Alfredo and Bandit, were socially isolated and subjected to a “stark environment” where they “could not forage, explore, mark, or engage in other normal behaviors.”¹³⁸ These conditions “essentially stripped [the lemurs] of almost of all of their natural behaviors, creating a high likelihood of both psychological and physical injury.” Similarly, in *Kuehl v. Sellner*, Cricket Hollow Zoo’s Primate Enrichment Plan had only one paragraph on lemur enrichment, which noted that lemurs Lucy and Chuki were housed separately and enjoy warm weather, perches and branches, PVC tubes, and nuts.¹³⁹ The court found that the lemurs received “very little in the way of environmental enrichment,” and that this “significantly disrupt[ed] their normal behavioral patterns and, therefore, constitute[d] ‘harassment’ and ‘taking’ within the meaning of the Endangered Species Act.”¹⁴⁰

With respect to primate enrichment, USDA has acknowledged that “acceptable enhancement programs should stimulate a variety of normal activities and meet all major areas of behavioral need in a species-typical manner.”¹⁴¹ The Agency should heed this experience when crafting enrichment requirements for all captive animals. To meet animals’ diverse behavioral and environmental needs, USDA should require regulated facilities to provide captive animals with species-appropriate daily enrichment in each of the following categories (discussed in more detail *infra* Sections F, G, H & I):¹⁴²

- **Structural enrichment** – through enclosures that have a species-appropriate design in terms of size, design, ambient environment, accessories, and biologically appropriate complexity
- **Food-based enrichment** – through novel/varied food and food delivery methods that stimulate natural feeding and foraging behaviors

¹³⁶ *Id.* at 2–3.

¹³⁷ *Id.* at 4.

¹³⁸ 424 F. Supp. 3d 404, 433 (D. Md. 2019), *aff’d*, 843 F. App’x 493 (4th Cir. 2021).

¹³⁹ 161 F. Supp. 3d 678, 711 (N.D. Iowa 2016), *aff’d*, 887 F.3d 845 (8th Cir. 2018).

¹⁴⁰ *Id.* at 711–12.

¹⁴¹ USDA: REPORT NONHUMAN PRIMATES, *supra* note 135, at 4.

¹⁴² See Mollie A. Bloomsmith et al., Fig. 1: Captive Primate Enrichment Options, *Guidelines for Developing and Managing an Environmental Enrichment Program for Nonhuman Primates*, 41:4 LAB’Y ANIMAL SCI. 372, 373 (Sept. 1991) (attached as Exhibit 94).

- **Occupational enrichment** - through enrichment devices that prompt cognition, manipulation, and sensory stimulation
- **Social enrichment (for social species)**– through social housing in species-appropriate groupings with compatible members of the same species

All of these categories are critical components that must be considered together when creating an effective enrichment program.¹⁴³

C. USDA should avoid broad performance standards and promulgate clear, species-specific enrichment standards.

ALDF does not support implementing environmental enrichment requirements as performance standards. To ensure that enrichment requirements are effective and enforceable, USDA should promulgate clear, species-specific engineering standards for captive animals designed to allow a full range of species-appropriate behaviors. USDA should base these requirements on the existing enrichment guidelines recommended either by the Global Federation of Animal Sanctuaries (GFAS) or the Association of Zoos and Aquariums (AZA). GFAS has developed 26 animal-specific volumes of Animal Care Standards that include specific requirements for enclosures and enrichment to promote behavioral and psychological wellbeing.¹⁴⁴ These standards were developed by animal care experts, sanctuary managers, and veterinarians.¹⁴⁵ The AZA Animal Care Manuals provide guidance for the care of 35 species and taxa, and 22 new manuals are in development.¹⁴⁶ These manuals include specific housing and enrichment guidelines developed by AZA advisory groups, biologists, behaviorists, veterinarians, and researchers.¹⁴⁷ GFAS and AZA guidelines are species or taxa specific and provide clear, science-based requirements for enclosure size, enclosure design, environmental enrichment, and group housing of social species. Where GFAS or AZA guidelines are not available for a species, USDA should set species-specific minimum enclosure and enrichment requirements based on current science and professional best practices.

USDA should not continue its current approach of establishing vague performance standards for enclosures and enrichment. These standards have been ineffective at ensuring animal welfare, and USDA Inspectors have stated that they are difficult, if not impossible, to enforce.¹⁴⁸ For example, AWA regulations for non-human primates require facilities to develop their own plans for environmental enhancement “adequate to promote the psychological well-being of nonhuman primates.”¹⁴⁹ This “adequacy” requirement is unaccompanied by concrete definitions or criteria and is so vague that it is unenforceable. USDA inspectors charged with enforcing these regulations have said that “the standards contain few solid criteria on which an inspector can

¹⁴³ SHAPE OF ENRICHMENT INC., *supra* note 127.

¹⁴⁴ Global Fed’n of Animal Sanctuaries [hereinafter “GFAS”], *Standards of Excellence*, <https://sanctuaryfederation.org/accreditation/standards/> [<https://perma.cc/3QKR-S2ST>] (last visited Apr. 9, 2023) (attached as Exhibit 95).

¹⁴⁵ *Id.*

¹⁴⁶ *Animal Care Manuals*, AZA, <https://www.aza.org/animal-care-manuals?locale=en> [<https://perma.cc/NNH2-QXZP>] (last visited Apr. 9, 2023) (attached as Exhibit 96).

¹⁴⁷ *Id.*

¹⁴⁸ USDA: REPORT NONHUMAN PRIMATES, *supra* note 135, at 4.

¹⁴⁹ 9 C.F.R. § 3.81.

judge the content of a plan as ‘in compliance’ or ‘out of compliance’” and they “had concerns about Agency support for particular interpretations or judgment because of the vague language and nature of the performance standard.”¹⁵⁰

Not only are the standards vague, but also AWA’s primate enhancement regulations provide insufficient guidance of where to find species-appropriate enrichment activities, merely referencing “appropriate” journals and reference guides and the opinion of the attending veterinarian, who may not have species-specific training. This scheme places the burden on facilities to find enrichment standards themselves and evaluate whether they are “adequate” and “appropriate.” This framing has resulted in the failure of many regulated facilities to provide adequate, species-appropriate enrichment, at the expense of animal wellbeing.¹⁵¹

Rather than requiring facilities that may lack species-specific expertise to create an enrichment plan to meet a vague performance goal, USDA should use the consolidated knowledge of animal behavior experts, scientists, and animal care professionals to set enforceable minimum standards for enrichment sufficient to meet species’ unique physical and psychological needs. These minimum requirements should incorporate GFAS or AZA guidelines, where available for the species or taxa.

D. USDA and the attending veterinarian should be required to review and approve written enrichment plans.

ALDF supports USDA’s suggested requirement of written enrichment plans. USDA should require all regulated facilities to submit a species-specific, written enrichment plan, created in conjunction with the attending veterinarian, to USDA for approval. USDA should ensure that the plan is designed to meet the physical and psychological needs of all AWA-protected captive animals housed at the facility. It should specify the normal behavior patterns for each species and how the facility meets those behavioral needs through each required element of enrichment (structural, food-based, occupational, and social, for social species). Species-specific enrichment plans should incorporate AZA or GFAS guidelines, if available for the species.

Ideally, enrichment plans should be submitted to USDA annually for approval, but at minimum, they should be submitted as part of AWA license applications and re-submitted every three years license renewals.¹⁵² The plan should incorporate minimum enrichment requirements and be tailored to meet the animals’ individual and species-specific needs. The attending veterinarian who works with the licensee to develop the plan should have species-specific training, and should review and approve the enrichment plan before it is submitted to the USDA.

When developing and reviewing the enrichment plan, the attending veterinarian should ensure that it meets the species-specific needs of the animals at the facility, based on their natural history and normal behaviors. The attending veterinarian should also consider whether the plan is appropriate for the individual animals based on their medical and personal history, and their psychological and physical needs. Additionally, the attending veterinarian should consider the

¹⁵⁰ USDA: REPORT NONHUMAN PRIMATES, *supra* note 135, at 4.

¹⁵¹ *See, e.g.*, *People for Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Md., Inc.*, 424 F. Supp. 3d 404 (D. Md. 2019), *aff’d*, 843 F. App’x 493 (4th Cir. 2021); *Kuehl v. Sellner*, 161 F. Supp. 3d 678 (N.D. Iowa 2016), *aff’d*, 887 F.3d 845 (8th Cir. 2018).

¹⁵² *See* 9 CFR §§ 2.1 & 2.5.

risks associated with any planned enrichments and should ensure that enrichments do not compromise the health or safety of the animals. Finally, the attending veterinarian should specifically review and approve any single housing of social species and ensure that it is medically necessary, that a plan for re-housing the animal in an appropriate social grouping is in place, and that robust alternative enrichment is provided in the interim.

E. Designated animal care staff should implement the enrichment plan.

The enrichment plan for each species should be overseen and implemented by designated, paid animal care staff or a staff enrichment committee.¹⁵³ Enrichment staff should develop a daily enrichment schedule for individual animals and groups based on the species-specific components of the enrichment plan.

Staff should observe and record all enrichment activities daily, along with required daily observation of all animals' health and wellbeing.¹⁵⁴ To ensure that the enrichment provided is beneficial for animal welfare, staff should evaluate enrichment activities by assessing animal's behavioral response to the enrichment to ensure that it results in positive behavioral changes, such as the expression of a species-appropriate behavior or a reduction in the expression of abnormal behaviors.¹⁵⁵ As the AZA notes, "It is important that enrichment items are not merely thrown in an exhibit and allowed to stay for extended periods – an enrichment program is only successful and useful if actively managed and constantly reviewed to ensure it encourages natural behaviors."¹⁵⁶ The enrichment schedule should be updated as necessary to reflect animals' changing needs and current professional knowledge and standards.¹⁵⁷ Up-to-date written enrichment plans, schedules, and records should be required to be available for inspection by USDA.

F. Structural enrichment requirements.

Animals in nature live in spatially and temporally complex environments and have evolved sophisticated behavioral repertoires to survive in these conditions.¹⁵⁸ Enclosures that are sterile and predictable fail to meet captive animals' needs, resulting in behavioral abnormalities, stress, and heightened risk of illness.¹⁵⁹ USDA should set minimum, species-specific standards for enclosure size, dimensions, design, and ambient environment that complement animals'

¹⁵³ See AZA: ACCREDITATION STANDARDS, *supra* note 24, at 20 ("The institution must have a specific paid staff member(s) or committee assigned for enrichment program oversight, implementation, assessment, and interdepartmental coordination of enrichment efforts."); See also Section V discussing training requirements for staff at regulated facilities.

¹⁵⁴ See 9 CFR § 2.40 (b)(3).

¹⁵⁵ See AZA: ACCREDITATION STANDARDS, *supra* note 24, at 20 ("Enrichment activities must be documented and evaluated, and program refinements should be made based on the results, if appropriate. Records must be kept current."); Cipreste, *supra* note 126, at 174.

¹⁵⁶ AZA, OTTER (LUTRINAE) CARE MANUAL, 9 (2018) (attached as Exhibit 97).

¹⁵⁷ See NAT'L RESEARCH COUNCIL, GUIDE FOR THE CARE AND USE OF LABORATORY ANIMALS, 8TH ED., 53 (2011) (attached as Exhibit 98).

¹⁵⁸ David Hancocks, *Bringing Nature into the Zoo: Inexpensive Solutions for Zoo Environments*, 1:3 INT. J. STUDY ANIMALS PROBLEMS 170, 170-71 (1980) (attached as Exhibit 99).

¹⁵⁹ *Id.*

biological adaptations and allow the species to express a full range of normal behaviors. These standards should be based on AZA or GFAS guidelines, where available for the species.

i. Space

Current AWA regulations do not set minimum space requirements for most warm-blooded animals: they are set as vague performance standards that require “sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement.”¹⁶⁰ This standard leaves it up to regulated facilities to determine what “sufficient” space and “adequate” freedom of movement are. To ensure that space requirements are enforceable and large enough to be species-appropriate, USDA should set specific minimum enclosure space requirements for each species, based on available AZA or GFAS guidelines, where available.

It is not enough to simply set minimum space requirements. AWA regulations governing enclosure space for marine mammals are a case in point: they are framed as minimum space requirements that are vastly inadequate. Marine mammal space requirements must be revised to better approximate each species’ normal behavior patterns. Polars bears, for example, are naturally nomadic,¹⁶¹ so AZA guidelines require habitats to provide walking and running opportunities, and suggest a minimum enclosure size of 500 square meters with an additional 150 square meters per bear.¹⁶² Current AWA regulations require enclosures to be only 37.16 square meters with an additional 3.72 square meters per bear.¹⁶³ Similarly, the space and depth requirements for cetaceans, which were developed over thirty years ago, do not allow the species to express their normal travel and diving behaviors and are far smaller than best practices within the regulated community, let alone these animals’ natural ranges of thousands of miles.¹⁶⁴

ii. Enclosure design

Enclosures should be required to have biologically appropriate structures that allow animals to express a full range of species-typical behaviors (e.g., perches, swings, dens, substrate, vegetation, water features).¹⁶⁵ For example, felids must be provided with climbing structures and areas to hide and rest in comfort.¹⁶⁶ Primates should be housed in a complex environment with furniture that encourages species-specific behavior, including climbing and perching for arboreal primate species. This can be accomplished by including benches, climbing structures, ropes, and hammocks.¹⁶⁷ Even small adjustments to the physical space can contribute to enrichment. For example, by including multiple doors in the enclosure, primates have easier access to outside social interaction and enrichment items.¹⁶⁸

¹⁶⁰ 9 CFR § 3.128.

¹⁶¹ AZA, POLAR BEAR (*URSUS MARITIMUS*) CARE MANUAL 14 (2018) (attached as Exhibit 100).

¹⁶² *Id.* at 14, 58.

¹⁶³ 9 C.F.R. 3.104(e).

¹⁶⁴ 9 CFR § 3.104 (b); *see generally* Barbara Kohn, Animal Welfare Institute, Comments on 81 F.R. 5629, Docket No. APHIS-2006-0085 (May 3, 2016) (attached as Exhibit 101).

¹⁶⁵ Carlstead & Shepherdson, *supra* note 127, at 343.

¹⁶⁶ GFAS, STANDARDS FOR FELID SANCTUARIES, 25 (2019) (attached as Exhibit 102).

¹⁶⁷ GFAS, STANDARDS FOR NEW WORLD PRIMATES, 43 (2013) (attached as Exhibit 103).

¹⁶⁸ *See id.* 10.

Enclosures should be large and complex enough to allow animals to withdraw from stressful stimuli, including exposure to the public, animal care staff, and conspecifics.¹⁶⁹ Wild animals who are unable to avoid fearful situations experience chronic stress and have been documented to exhibit stereotypic behaviors and injure themselves.¹⁷⁰ Visual barriers, hide areas, and landscaping provide privacy and escape routes, and improve social interactions between socially housed animals.¹⁷¹

Prey species should not be housed adjacent to predators because such arrangements cause prey species high levels of stress.¹⁷²

iii. Ambient environment

USDA should set species-specific standards for acceptable temperature ranges and lighting conditions for indoor and outdoor enclosures, rather than relying on vague performance standards. The AWA regulations for most warm-blooded animals provide that ambient temperatures “shall not be allowed to fall below nor rise above temperatures compatible with the health and comfort of the animal,” another general performance standard.¹⁷³ Specific temperature requirements are imperative because the wrong ambient temperature can have negative behavioral and physiological consequences. Marine mammals, for example, have highly species-specific temperature tolerances, and are more susceptible to environmental and infectious disease when housed in the extremes of their temperature tolerance range.¹⁷⁴ Cetaceans, pinnipeds, otters, and polar bears are generally better adapted to cold than to heat, while sirenians are generally adapted to warmer waters and become hypothermic in cold-water conditions. Species-specific temperature ranges are readily available in GFAS and AZA guidance and in the scientific literature and should be used as the basis for species-specific engineering standards that would give regulated facilities clear guidance and be easily enforceable by USDA inspectors.¹⁷⁵

Similarly, minimum light requirements should be framed as species-specific engineering standards. AWA regulations provide only general guidance that lighting be “sufficient,” “ample” and “appropriate for the species[.]”¹⁷⁶ GFAS and AZA guidelines include parameters for the spectra, intensity, and duration of light that facilities should provide to mimic natural daily and seasonal light cycles, which is vital for animal health.¹⁷⁷ For example, UV light is important for vitamin D production in many mammals, and replicating the lighting in a species’ natural environment may require access to natural light through outdoor enclosures, the addition of

¹⁶⁹ Carlstead & Shepherdson, *supra* note 127, at 340, 341.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 343.

¹⁷² *Id.* at 340.

¹⁷³ 9 CFR § 3.126

¹⁷⁴ Cara L. Field, *Management of Marine Mammals*, Merck Veterinary Manual (last updated June 2022), [https://www.merckvetmanual.com/exotic-and-laboratory-animals/marine-mammals/management-of-marine-mammals# \[https://perma.cc/ZG4Z-24KQ\]](https://www.merckvetmanual.com/exotic-and-laboratory-animals/marine-mammals/management-of-marine-mammals# [https://perma.cc/ZG4Z-24KQ]) (attached as Exhibit 104).

¹⁷⁵ See, e.g., AZA, MONGOOSE, MEERKAT, AND FOSSA (HERPESTIDAE/EUPLERIDAE) CARE MANUAL, 9-10 (2011) (attached as Exhibit 105).

¹⁷⁶ 9 CFR § 3.126; 9 C.F.R. § 3.102(c).

¹⁷⁷ See, e.g., GFAS, STANDARDS FOR ELEPHANT SANCTUARIES, 13 (2019) (attached as Exhibit 106); AZA: MONGOOSE, *supra* note 175, at 9–10; AZA: OTTER, *supra* note 156, at 9.

skylights or bay windows for indoor enclosures, ensuring that the glass used does not block UV light, and using natural spectrum lamps to supplement natural light when necessary.¹⁷⁸

G. Food-based enrichment requirements.

USDA should require facilities to provide each captive animal with daily, time-consuming food-based enrichment. USDA should also set species-specific minimum standards for food-based enrichment that encourage species' normal feeding and foraging behaviors. These standards should be based on GFAS and AZA animal care guidelines, where available for the species.

Food-based enrichment can have long-lasting animal welfare benefits, including reducing chronic inactivity and stereotypic behaviors and promoting psychological wellbeing.¹⁷⁹ In the wild, animals spend much of their day feeding and acquiring food.¹⁸⁰ Introducing food-based enrichment simulates the challenge of acquiring food in nature.¹⁸¹ Food-based enrichment strategies include scattering or hiding food, using puzzle feeders, introducing novel food items, and presenting food in a manner that requires animals to forage or hunt.¹⁸² Foraging and hunting behavior can be encouraged through various feeding enrichment strategies like increasing the number of daily feeding sessions and implementing an unpredictable feeding schedule to mimic conditions in nature where the timing of meals is more variable.¹⁸³

For example, to encourage polar bears' normal hunting behaviors, the AZA Animal Care Manual for polar bears recommends hiding food for the animals to find and using puzzle feeders.¹⁸⁴ To encourage the normal foraging behaviors of lemurs, GFAS standards require a varied diet and varied methods of food presentation, including puzzles that increase food procurement time and dispersing seeds, nuts, and grains in small amounts to encourage foraging behavior.¹⁸⁵

Notably, public feeding of captive animals should not be considered food-based enrichment. As addressed in Section I, public feeding is notoriously difficult to monitor and often results in harm to captive animals, with excessive feeding and improper diet leading to poor mental and physical health.

H. Occupational enrichment requirements.

USDA should require facilities to provide all captive animals with species-appropriate enrichment devices that are mentally stimulating and encourage problem-solving, exploration, stimulation of the five senses, and manipulation. Species-appropriate occupational enrichment should be required to be provided during daily activities, and novel enrichment items should be

¹⁷⁸ *Id.*

¹⁷⁹ See Carlstead & Shepherdson, *supra* note 127, at 345; Cipreste et al., *supra* note 126, at 176. For example, a study at the Lincoln Park Zoo on two Asian small-clawed otters found that requiring the otters to expend time and energy obtaining food hidden in grapevine balls improved various indicia of psychological wellbeing. See Stephen R. Ross, *The Effect of a Simple Feeding Enrichment Strategy on the Behaviour of Two Asian Small-clawed Otters (Aonyx cinerea)*, 28 AQUATIC MAMMALS 113 (2002) (attached as Exhibit 107).

¹⁸⁰ Cipreste et al., *supra* note 126, at 175.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 113.

¹⁸⁴ AZA: POLAR BEAR, *supra* note 161, at 58.

¹⁸⁵ *Id.* at 29–30.

supplied at least twice per week to avoid habituation and continue to stimulate natural behaviors.¹⁸⁶ All enrichment devices should be cleaned and sterilized before introduction to an animal to prevent diseases transmission, and enrichment staff, in consultation with the attending veterinarian, should evaluate the safety of the animals, staff, and public before implementing new enrichment devices.¹⁸⁷ As discussed in Section IV.B, *supra*, occupational enrichment should be one component of a comprehensive, varied enrichment plan designed to further a full range of species-appropriate behaviors—throwing a simple toy into an enclosure does little to further animal welfare.¹⁸⁸

I. Enrichment requirements for social species.

i. USDA should mandate social housing for all social species

As the default requirement, USDA should mandate that facilities with animals known to belong to social species house them in appropriate social groupings with members of their own species. USDA should promulgate minimum standards for the social housing of each social species based on existing standards set by GFAS or the AZA, where available. Currently, social contact with members of same or compatible species is only required for non-human primates, and even then, social housing is not required.¹⁸⁹ Social housing should be the default standard for *all* social species because appropriate social interactions among members of the same species are essential to the normal wellbeing and development of social species.¹⁹⁰ Social groupings should be of sufficient size to meet the animals' physical, social, and psychological needs in terms of grouping size, age, and sex structure, based on the natural social hierarchy of the species and the animals' individual personalities.¹⁹¹

In exceptional circumstances, where group housing results in severe or prolonged aggression and the attending veterinarian determines that group housing is seriously endangering animal health or safety, incompatible animals may be temporarily separated.¹⁹² Single housing of social species should be a last resort and should be limited to the period necessary for animal welfare.¹⁹³ Daily visual, auditory, and olfactory social contact with members of the same or compatible species should be provided to singly housed animals, in addition to more frequent daily enrichment activities. The need for single housing should be continuously reviewed by the attending veterinarian, and singly housed animals should be returned to group housing as soon as safely possible.¹⁹⁴ If a social animal is housed in a pair and its partner dies or is transferred, the facility should be required to transfer the remaining animal to an appropriate facility to be housed with compatible members of their own species.

Additionally, enclosures for socially housed animals must have sufficient space and structural complexity to allow the animals to live compatibly and escape aggression.¹⁹⁵ For

¹⁸⁶ See Cipreste, *supra* note 126, at 176.

¹⁸⁷ *Id.*

¹⁸⁸ See, e.g., Line et al., *supra* note 130, at 473–483, (1991).

¹⁸⁹ 7 U.S.C. § 2143(a)(2)(B)); 9 C.F.R. § 3.81(a)(3).

¹⁹⁰ See NAT'L RESEARCH COUNCIL, *supra* note 157, at 64.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 55.

example, social felid species should be provided with perches and hiding areas to be able to rest and avoid stressful encounters with socially dominant group members.¹⁹⁶

ii. Specific enrichment requirements for certain species

a. Non-Human Primates

Current AWA standards for the psychological wellbeing of non-human primates are inadequate to ensure captive primate welfare. USDA should adopt and implement ALDF and Rise for Animal’s 2014 rulemaking petition and align AWA primate enrichment standards for all nonhuman primates with NIH’s enrichment standards for captive chimpanzees. The USDA solicited public feedback on that rulemaking petition in 2015,¹⁹⁷ and a district court recently held that USDA’s denial of that petition was arbitrary and capricious because “the Agency clearly ignored and failed to consider ‘all the relevant factors’ when concluding that the current AWA standards adequately fulfill the Agency’s statutory mandate.”¹⁹⁸

AWA primate enrichment regulations are inadequate in several ways. They do not require that primates always be housed in compatible social groups; they only specify that singly housed primates must be able to see and hear primates of their own or compatible species, unless the attending veterinarian determines that it would endanger their health, safety, or wellbeing.¹⁹⁹ Merely being able to see and hear another primate is insufficient to meet primates’ complex social needs, and social isolation can lead to serious illness and causes permanent psychological and physical injury.²⁰⁰ USDA itself has acknowledged that group housing is key to primates’ psychological welfare: in its 1999 Draft Policy, the Agency stated that: “According to our research, primates are clearly social beings and social housing is the most appropriate way to promote normal social behavior and meet social needs. In order to address the social needs of nonhuman primates under §3.81(a), the plan must provide for each primate of a species known to be social in nature to be housed with other primates whenever possible.”²⁰¹

In addition to social housing, USDA has acknowledged that to meet currently accepted professional standards for enrichment, facilities must provide primates with:²⁰²

- enclosures that allow each primate to engage in species-typical postures and positions for resting, sleeping, feeding, exploration, and play, species-typical locomotion, and social adjustments;
- daily, time-consuming foraging opportunities;
- variation in enrichment devices and strategies;

¹⁹⁶ See GFAS: FELID SANCTUARIES, *supra* note 166, at 25 (2019).

¹⁹⁷ See 80 Fed. Reg. 24840 (May 1, 2015).

¹⁹⁸ *New England Anti-Vivisection Soc’y v. Goldentyer*, No. 8:20-CV-02004-JRR, 2023 WL 2610867, 20 (D. Md. Mar. 23, 2023)

¹⁹⁹ 9 C.F.R. § 3.81(a)(3).

²⁰⁰ *Animal Legal Defense Fund’s Concise Statement of Undisputed Material Facts in Support of their Motion for Summary Judgment at 28–29 ¶¶ 170–171, ALDF v. Lucas*, (No. 2:19-cv-00040-PLD), (June 30, 2021); *People for Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park of W. Md., Inc.*, 424 F. Supp. 3d 404, 414 (D. Md. 2019), *aff’d*, 843 F. App’x 493 (4th Cir. 2021).

²⁰¹ USDA, *Animal Welfare; Draft Policy on Environment Enhancement for Nonhuman Primates*, 64 Fed. Reg. 38145, 38147 (Jul. 15, 1999) (attached as Exhibit 108).

²⁰² *Id.* at 38148–49.

- opportunities to exert control over the environment; and,
- stimulation of each of the five senses in a species-appropriate, non-distressing manner.

b. Domestic dogs and cats

1. USDA should adopt enrichment standards for domestic dogs and cats that equal or exceed standards set by the Association of Shelter Veterinarians.

USDA’s requirements for keeping dogs and cats at commercial breeding facilities fall starkly short of the standard of care expected for the exact same animals housed at animal shelters or kept as pets in the home. Whereas confining a dog inside a small kennel for their whole life with no walks or social interaction would be widely condemned as neglect under any other circumstance, the USDA’s current regulations say that is totally acceptable to do that to a dog at a commercial breeding facility.²⁰³

USDA must recognize that dogs and cats have the same basic needs whether they are kept as pets or used for commercial breeding. It should do this by adopting enrichment standards that meet or exceed the standard of care provided to dogs and cats at an animal shelter regarding physical and mental enrichment, i.e., enclosures, exercise, play and social interaction.

There is no justification for USDA to allow commercial breeders to treat their dogs and cats worse than the same animals would fare at an animal shelter. Both circumstances involve caring for a population of animals. But whereas animal shelters are non-profit organizations performing a service in the public interest for animals that are usually have short-term stays, USDA-licensed breeding operations are voluntary for-profit enterprises for animals that usually spend their entire life on-site. As such, generally accepted professional standards at animal shelters should supply an *absolute minimum* guideline for USDA standards.

2. The AWA regulations permit unacceptable puppy and kitten “mill” conditions.

A dog at a USDA-regulated facility may live her whole life alone on mesh flooring in an area the size of two crates without ever being let out for exercise or walks, no socialization with other dogs, no social interaction with humans, and no other form of enrichment. AWA regulations for dogs authorize primary enclosures that are the size of a crate, i.e. only 6 inches longer than the dog (squared).²⁰⁴ The regulations allow facilities to develop their own exercise plans for dogs but prescribe no minimum amount of time for the dog to be outside the cage.²⁰⁵ Letting the dog out to exercise is not required at all if the dog’s primary enclosure is doubled to the size of two

²⁰³ For example, in 2022 nearly 4,000 beagles were removed from a mass breeding facility. While USDA inspections found dozens of AWA violations including lack of veterinary care and cleanliness of enclosures, it is clear current regulations allow mass breeding facilities to proliferate. Chuck Johnston, *4,000 beagles will be rescued from a Virginia breeding facility* (July 18, 2022) <https://www.cnn.com/2022/07/12/us/beagles-virginia-facility-rescue/index.html> [<https://perma.cc/M53B-UY3Q>] (attached as Exhibit 109); *see also* associated USDA Inspection Report https://www.warner.senate.gov/public/_cache/files/8/e/8e46754e-f01e-42a9-ad7f-d347f0174573/468F14931A603EEDFA377A1B4C611D31_pst-inspection-report-envigo-rms-llc-4-.pdf (attached as Exhibit 110).

²⁰⁴ 9 C.F.R. § 3.6(c)(1).

²⁰⁵ *See* 9 C.F.R. § 3.8.

crates.²⁰⁶ Solid flooring is not required.²⁰⁷ Environmental enrichment is not required.²⁰⁸ Social interaction with other dogs is not required even though dogs are pack animals.²⁰⁹ Social interaction with humans is not required even though dogs are domesticated to be social with humans.²¹⁰

A cat at a USDA-regulated facility may live her whole life alone in a 2-foot cube with no enrichment or social interaction. The regulations authorize primary enclosures for cats that are only a 2-foot cube.²¹¹ Additional exercise area is not required for cats.²¹² Solid flooring is not required.²¹³ Environmental enrichment such as toys or vertical layering is not required, except for one raised surface large enough to hold the cat.²¹⁴ Social interaction with other cats is not required.²¹⁵ Social interaction with humans is not required even though cats are domesticated to be social with humans.²¹⁶

USDA must use this rulemaking process to improve enrichment for dogs and cats kept at regulated facilities. The current AWA regulations provide a grossly subpar standard of care and enrichment for dogs and cats. Dogs and cats should spend only limited time in cages, and should receive meaningful exercise opportunities, environmental enrichment, and social contact with humans and other animals.

3. The Association of Shelter Veterinarians provide a minimum standard of enrichment for dogs and cats.

Ideally, dogs or cats used for breeding should be provided the same living standards as pets—they are the same animals with the same mental and physical needs. That means they should generally be kept indoors in environmentally-controlled facilities with enrichment, walks (for dogs), and regular socialization with humans or other animals.²¹⁷ The USDA should look to professionally managed animal shelters as a basis for appropriate standard of care. The Association of Shelter Veterinarians (ASV) supplies highly regarded standards for dogs, cats,

²⁰⁶ See 9 C.F.R. §§ 3.6(c)(1) and 3.8(a).

²⁰⁷ See 9 C.F.R. § 3.6.

²⁰⁸ See *id.*

²⁰⁹ See C.F.R. § 3.7.

²¹⁰ See C.F.R. § 3.7.

²¹¹ 9 C.F.R. § 3.6(b).

²¹² See *id.*

²¹³ See 9 C.F.R. § 3.6.

²¹⁴ 9 C.F.R. § 3.6(b).

²¹⁵ See 9 C.F.R. § 3.7.

²¹⁶ See *id.*

²¹⁷ For example, the American Kennel Club (AKC) recognizes says that “physical exercise is great and necessary for a dog” and that dogs also “need[] mental exercise.” Nicole Ellis, *A Mentally Stimulated Dog is a Happy Dog*, AKC (Jan. 1, 2009), <https://www.akc.org/expert-advice/training/mentally-stimulated-happy-dog/> [https://perma.cc/B7Y7-MPLR] (attached as Exhibit 111). The AKC also notes that walking a dog provides physical activity and mental stimulation and suggests walking your dog once a day for at least 10-15 minutes. Nandini Maharaj, *How Often Should You Walk Your Dog?*, AKC (May 13, 2022), <https://www.akc.org/expert-advice/health/how-often-should-you-walk-your-dog/> [https://perma.cc/7S5X-RACG] (attached as Exhibit 112). While AKC appears to be contemplating dogs kept as pets, a dog’s mental and physical needs are the same whether they are kept as a pet or used for commercial breeding.

and other animals at shelters.²¹⁸ The USDA should also look to and adopt all relevant ASV Guidelines relating to enrichment.

- **Dogs and cats should have significantly larger primary enclosures.** The ASV Guidelines provide that primary enclosures must be large enough to “allow animals to sit, sleep, and eat away from areas of their enclosures where they defecate and urinate.”²¹⁹ With respect to any individually housed dogs, the ASV Guidelines require larger primary enclosures than what is required under the AWA. The ASV Guidelines acknowledge that enclosure size will vary for dogs, but reference standards in the New Zealand’s *Code of Welfare: Dogs* that provide manyfold more space than the AWA regulations—e.g., approximately 3 x 5 feet for a dog that is approximately 45-90 pounds.²²⁰ With respect to individually housed cats, the ASV Guidelines state that anything less than 8 square feet is “unacceptable” and recommends at least 11 square feet.²²¹ Wire mesh bottoms and slatted floors for both dogs and cats are “unacceptable because they can cause pain, discomfort, and injury.”²²²
- **Primary enclosures should include enrichment.** The ASV Guidelines recognize that enrichment within primary enclosures is “critical.”²²³ All dogs “need the opportunity to rest comfortably, retreat from view, chew, play, and exercise choice within their environment.”²²⁴ All cats “need the opportunity to rest comfortably, hide, perch, scratch, play, and exercise choice within their environment” and it is important for them to have “[s]cratching posts, elevated perches, and hiding boxes[.]”²²⁵ Appendix F of the ASV Guidelines provides additional enrichment interventions.²²⁶
- **Dogs should have daily time outside the enclosure.** Barring an unmanageable health or safety risk, the ASV Guidelines require that “[d]ogs must be provided with daily opportunities for activity outside of their kennels[.]”²²⁷ Providing an opportunity to leave the enclosure is recognized as “one of the most effective means of reducing stress and frustration in kenneled dogs.”²²⁸
- **Dogs and cats should have positive, daily social interaction with humans and other animals.** The ASV Guidelines recognize that “[s]ocial isolation has a profoundly negative impact” on animals and generally deems positive daily social interaction as being of “the utmost importance” and “essential.”²²⁹ Examples of positive social interaction with people are provided in Appendix F of the ASV

²¹⁸ See LENA DETAR, ET AL. THE ASSOCIATION OF SHELTER VETERINARIANS’ GUIDELINES FOR STANDARDS OF CARE IN ANIMAL SHELTERS (2d ed., Dec. 2022) (attached as Exhibit 113).

²¹⁹ *Id.* at 14.

²²⁰ NEW ZEALAND MINISTRY FOR PRIMARY INDUSTRIES, CODE OF WELFARE: DOGS (2018) (attached as Exhibit 114).

²²¹ *Id.* at 14.

²²² DETAR ET AL. *supra* note 218, at 14.

²²³ *Id.* at 46.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at 74.

²²⁷ *Id.* at 45.

²²⁸ *Id.*

²²⁹ *Id.*

Guidelines.²³⁰ Positive social interaction can also occur through well-managed playgroups and social group cohousing. The ASV Guidelines provide space and enclosure parameters specifically for social housing that the USDA should use as a reference.²³¹

V. USDA must require regulated entities to devise species-specific training plans for all individuals handling captive animals.

ALDF supports USDA's contemplated addition of regulations regarding the training of AWA licensees and staff working with protected animals. While the ANPR specifically requested comment on training for "licensees and staff of exhibitors who handle Category 1 and 2 animals[,]” ALDF urges USDA to promulgate training regulations that apply to **all** animals protected by the AWA.²³² Proper training for people working with captive animals is essential for the safety and security of animals, staff, volunteers, and visitors at AWA-regulated entities. USDA should require regulated entities to devise training plans for all individuals working with any captive animal protected by the AWA. ALDF recommends that species-specific training plans be written and reviewed by the facility's attending veterinarian(s) with species-specific expertise and submitted to the USDA as part of the AWA licensing process. Requiring regulated entities to submit training plans for each species is an effective way to ensure appropriate training and staff education is occurring.

While regulated entities should devise their own training protocols, USDA must require that said protocols should be reviewed by an attending veterinarian with species-specific expertise.²³³ Each training plan must be written and tailored to each species present at the regulated entity. Each training must include at minimum information of each staff's knowledge of and training in (1) animal welfare, (2) animal behavior, (3) animal husbandry, (4) zoonotic disease;²³⁴ and (5) emergency and escape protocols.²³⁵ These areas are essential to ensure staff member knowledge and ability to work with the species in their care and recognize when captive animals are stressed and showing signs of distress.²³⁶ Training will also reduce the risk of zoonotic disease spread and improve outcomes in emergency situations.

Training should not be limited to less experienced staff or new hires. USDA should follow the AZA in recognizing the ever evolving "science of zoology and aquatic studies" and ensure that the "standards rise to accurately reflect current understanding and modern practices, and [] drive continuous improvement[.]”²³⁷ To ensure staff at regulated entities are up to date on current animal welfare and behavior standards, USDA must establish a continuing education requirement. ALDF recommends that all staff handling captive animals at AWA-regulated entities complete species-specific continuing education every two years. Additionally, USDA

²³⁰ *Id.* at 74.

²³¹ *Id.*

²³² 88 Fed. Reg. 1151, 1154.

²³³ This may require the review of multiple veterinarians depending on the number of species at the regulated entity.

²³⁴ Including staff member's knowledge of diseases species in their care are susceptible to as well as protocol for limiting spread of infectious disease.

²³⁵ Including injury to staff, volunteers, or visitors.

²³⁶ See generally discussion of stress in captive animals *supra* Section I.A.

²³⁷ See AZA: ACCREDITATION STANDARDS, *supra* note 24, at 5.

should follow AZA's requirements in its accreditation standards and animal care manuals to provide funding for "continuing education courses, related meetings, conference participation, and other professional opportunities" and maintain a species-specific training library for paid and unpaid staff.²³⁸

USDA must also require documented continuing education in the areas enumerated above every two years. As the overseeing agency, USDA must take the role of collecting, verifying, and reviewing training plans, continuing education documentation, and credentials. Regulated entities can demonstrate staff member qualification by providing resumes, curriculum vitae, continuing education certificates, and staff evaluations to USDA during the AWA license renewal process.

Requiring training protocols are necessary and would not be a departure from similar USDA regulations related to staff training and animal welfare. USDA already requires training of "scientists, animal technicians, and other personnel involved with animal care and treatment at research facilities."²³⁹ Therefore, it is logical for USDA to require training for staff working with captive animals at AWA covered facilities. USDA should review and adopt staff training requirements in the AZA's Accreditation Standards & Related Policies and published Animal Care Manuals.²⁴⁰

The AZA requires professional staff to "command[] an appropriate body of special knowledge and ha[ve] the professional training, experience and ability to reach zoological park or aquarium management decisions consonant with the experience of peers, and who ha[ve] access to and knowledge of the literature of the field."²⁴¹ With respect to training, the AZA requires facilities to provide all professional staff "opportunities for training and development" including being "provided opportunities for training and professional development" and that "[f]unding should be provided for travel, meeting/conference participation, tuition, on-line training, and other professional opportunities when possible."²⁴² Additionally, in each Animal Care Manual the AZA details staff skills and training for specific species. For example, staff working with tigers "should be trained in all areas of tiger behavior management" and the facility should fund professional development and a resource library for all staff and volunteer to reference when needed.²⁴³

Ensuring adequate training occurs does not only benefit captive animals. Proper training in animal behavior and disease management minimizes the risk of injury and disease spread to individuals working at or visiting the facility.²⁴⁴ Throughout its standards, AZA discusses the risk disease pose to animals, staff, and visitors and requires certified institutions to "design facilities, develop animal care protocols and present animals for public contact in ways that minimize this risk (e.g., hand-washing or hand sanitizing stations and signage, where applicable, etc.).

²³⁸ See *id.* at 31; see also AZA: OTTER, *supra* note 156, at 81.

²³⁹ 7 U.S.C. § 2143 (d). Requiring training on "humane practice of animal maintenance and experimentation...[and] methods whereby deficiencies in animal care and treatment should be reported."

²⁴⁰ See AZA: ACCREDITATION STANDARDS, *supra* note 24; see also *Animal Care Manuals*, AZA, <https://www.aza.org/animal-care-manuals?locale=en> [<https://perma.cc/NNH2-QXZP>].

²⁴¹ See AZA: ACCREDITATION STANDARDS, *supra* note 24, at 7.

²⁴² *Id.* at 31.

²⁴³ Tigers AZA, TIGER (PANTHERA TIGRIS) CARE MANUAL 14 (attached as Exhibit 115)

²⁴⁴ See discussion *supra* at Section I.A.

Institutions must train appropriate paid and unpaid staff in methods to prevent zoonotic disease.”²⁴⁵ In addition to maintaining training protocols, AZA requires run throughs to reduce the risk of emergency threats, like escaped animals. “Live-action emergency drills (functional exercises) must be conducted at least once annually. . . .”²⁴⁶ USDA must require regulated entities to include training on the spread of zoonotic disease and preventing injury and escape in their plans.

VI. The Benefits of Strengthened AWA Regulations Outweigh any Costs

Through its ANPR, USDA invites comments on (1) the costs of developing a written plan for compliance for all public contact activities; (2) the costs associated with training; (3) the costs associated with providing enrichment to all AWA-protected animals; and (4) “economic cost considerations for businesses, and in particular small businesses, associated with the amendments being considered.” Although the Agency may be required to collect this information under the Regulatory Flexibility Act,²⁴⁷ it should not allow cost considerations to influence its substantive rulemaking under the AWA. The Regulatory Flexibility Act’s “requirements are purely procedural and only require the agency to describe the required topics.”²⁴⁸ “While the statute sets out precise, specific steps an agency must take, it imposes no substantive constraint on agency decision-making.”²⁴⁹ The AWA, on the other hand, does. The Act requires the Agency to ensure the humane treatment of animals, regardless of cost. To the extent that USDA does consider costs, however, the benefits of strengthened regulations outweigh such costs.

A. Congress did not intend USDA to consider the costs of regulations that guarantee the humane treatment of animals

“When Congress has intended that an agency engage in cost-benefit analysis, it has clearly indicated such intent on the face of the statute.”²⁵⁰ The AWA reflects this Congressional intent in some sections, but not in the provisions at issue in this ANPR. Section 2153 of the AWA, for instance, requires the USDA to consider the costs borne by small facilities with regard to licensure fees. It instructs the USDA to adjust such fees “on an equitable basis taking into consideration the type and nature of the operations to be licensed.”²⁵¹ The AWA does not, however, include similar language in sections 2131 or 2143, which together provide that the Agency “shall” promulgate standards to “insure” that animals being used for exhibition “are provided humane care and treatment”—without equivocation.

When Congress asks an agency to consider costs in some parts of a statute, but not in others, the agency should only consider costs in the place that Congress directed. The Supreme Court’s decision in *Whitman v. American Trucking Assns., Inc.* is instructive.²⁵² There, the Court

²⁴⁵ See AZA: ACCREDITATION STANDARDS, *supra* note 24, at 36.

²⁴⁶ See *id.* at 39.

²⁴⁷ 5 U.S.C. § 601, *et seq.*

²⁴⁸ *Associated Dog Clubs of New York State, Inc. v. Vilsack*, 75 F. Supp. 3d 83, 94 (D.D.C. 2014) (cleaned up).

²⁴⁹ *Nicopure Labs, LLC v. Food & Drug Admin.*, 266 F. Supp. 3d 360, 408 (D.D.C. 2017), *aff’d*, 944 F.3d 267 (D.C. Cir. 2019) (cleaned up).

²⁵⁰ *Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 506–12 (1981).

²⁵¹ *Id.*

²⁵² 531 U.S. 457 (2001).

reviewed a claim that section 109 of the Clean Air Act,²⁵³ authorized the EPA to consider implementation costs in setting ambient air quality standards.²⁵⁴ After examining other provisions of the statute in which Congress had given the agency authority to consider costs, the Court read section 109, which was silent on the matter, to prohibit agency reliance on cost considerations.²⁵⁵ The Court explained that it would “refuse[] to find implicit in ambiguous sections of the CAA an authorization to consider costs that has elsewhere, and so often been expressly granted.”²⁵⁶ Further motivating the Court in *American Trucking* was the fact that incorporating a cost-benefit analysis into the agency’s calculus risked countermanding Congress’ decision to protect public health. In that circumstance, a consideration of costs would have been “both so indirectly related to public health and so full of potential for canceling the conclusions drawn from direct health effects that it would surely have been expressly mentioned in [the text] had Congress meant it to be considered.”²⁵⁷

The same is true here. If Congress had intended for exhibitors to treat animals humanely, but only when it is inexpensive for them to do so, it would have said so plainly, using “specific language.”²⁵⁸ Instead, Congress instructed the USDA to consider the economic costs borne by small facilities in one section of the AWA, but not in the sections requiring that animals be treated humanely. Those sections, which provide that the Agency “shall” promulgate standards to “insure” that animals being used for exhibition “are provided humane care and treatment”²⁵⁹ are written in unequivocal terms. They contain no suggestion that the USDA should do anything *other* than guarantee the humane treatment of animals.²⁶⁰

In these circumstances, the AWA’s directive to guarantee the humane treatment of animals, without equivocation, reflects “[a] policy choice . . . which only Congress, not the courts and not the [Agency]” can undo.²⁶¹ “[I]f there is a problem with the economic [] feasibility of the [humane] standards,” the party affected by the standards “must make its case to Congress, the only institution with the authority to remedy the problem.”²⁶²

²⁵³ 42 U.S.C. § 7409(a).

²⁵⁴ *Whitman*, 531 U.S. at 457.

²⁵⁵ *Id.* at 467.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 469.

²⁵⁸ *Am. Textile Mfrs. Inst., Inc.*, 452 U.S. at 506–12 (“Congress uses specific language when intending that an agency engage in cost-benefit analysis.”). The Flood Control Act of 1936, for example, authorizes regulations “if the benefits to whomsoever they may accrue are in excess of the estimated costs.” 33 U.S.C. § 701a. Similarly, the Outer Continental Shelf Lands Act Amendments of 1978, encourage regulation of oil drilling technology, “except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.” 43 U.S.C. § 1347(b).

²⁵⁹ 7 U.S.C. §§ 2131, 2143.

²⁶⁰ *Compare* *Michigan v. E.P.A.*, 576 U.S. 743, 750–53 (2015) (requiring the Environmental Protection Agency to consider costs, since Congress gave agency discretion to regulate air pollutants only when “appropriate”); *with* *New England Anti-Vivisection Soc’y v. Goldentyer*, No. 8:20-CV-02004, 2023 WL 2610867, at *11 (D. Md. Mar. 23, 2023) (“The language of AWA makes plain that Congress enacted the statute to protect the welfare of animals in laboratory and research settings. The court is unconvinced that Congress intended the Agency to consider inspector workload as a factor when developing standards and protocols for protecting the welfare of animals.”).

²⁶¹ *Lead Indus. Ass’n, Inc. v. Env’t Prot. Agency*, 647 F.2d 1130, 1148–51 (D.C. Cir. 1980).

²⁶² *Id.*; *see* *TVA v. Hill*, 437 U.S. 152 (1978) (refusing to curtail the Endangered Species Act’s protection of animals, even when it risked the viability of a \$100 million dam).

B. Even if USDA conducts a cost-benefit analysis, the benefits of strengthened regulations outweigh any costs.

Even if USDA does consider the costs of strengthening AWA regulations, the agency must also consider the animal welfare benefits that would result from ALDF's proposed changes. The D.C. district court's decision in *Animal Legal Def. Fund v. Madigan* is instructive.²⁶³ There, the court found USDA's decision not to expand AWA regulations to be arbitrary and capricious, since the agency primarily considered the costs associated with the proposed revisions, but ignored the animal welfare benefits.²⁶⁴ As the court explained, it is a "fundamental error" to focus on costs, and gloss over benefits, when expanding AWA regulations would further the purpose of the Act and "benefit the animals the agency is charged with protecting."²⁶⁵

These regulations are long overdue. As our understanding of animal behavior and psychology has evolved, so has our understanding of what is required to ensure the humane treatment of captive animals. USDA has the authority to "decide that a growing problem warrants more oversight than was previously necessary" and impose new regulations where there were none.²⁶⁶ In its ANPR, USDA admits that from 2019 to 2021, the number of licensed exhibitors that allow public contact with captive animals increased 25 percent, and over 12 percent of reported "handling" non-compliances resulted in human or animal injury, or animal death.²⁶⁷ USDA also acknowledges that it is "well understood that environmental enrichment for animals under a licensee's care is vital to their psychological health and welfare," but that currently, enrichment requirements are limited to marine mammals and primates.²⁶⁸ As the agency itself recognizes, clear, comprehensive regulations are required in these areas to ensure both animal welfare and public safety.²⁶⁹

i. Strengthening AWA regulations will result in significant animal welfare and public welfare benefits.

Here, enacting the changes that ALDF has proposed will have significant animal welfare and public welfare benefits that outweigh any costs to the Agency or to regulated facilities.

As discussed in the previous sections of this comment, amending AWA regulations in the following ways will result in significant benefits that go to the heart of the Act's purpose.

1. Requiring animal care staff at regulated facilities to have species-specific training
Animal welfare benefits include:
 - Decreased risk of zoonotic disease spread
 - Decreased risk of animal escapesPublic welfare benefits include:
 - Increased awareness of animal behavior, which minimizes injurious encounters
2. Banning public contact with animals

²⁶³ 781 F. Supp. 797, 805 (D.D.C. 1992), *vacated on other grounds*, *Animal Legal Def. Fund, Inc. v. Espy*, 23 F.3d 496 (D.C. Cir. 1994).

²⁶⁴ *Id.* at 805.

²⁶⁵ *Id.* at 805–806.

²⁶⁶ *Associated Dog Clubs of New York State, Inc. v. Vilsack*, 75 F. Supp. 3d 83, 91 (D.D.C. 2014) (upholding USDA's decision to regulate online pet store sellers for the first time).

²⁶⁷ 88 Fed. Reg. 1151, 1152.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

Animal welfare benefits include:

- Decreased risk of zoonotic disease spread
- Decreased risk of psychological and physical harm to animals

Public welfare benefits include:

- Decreased risk of harm to humans

3. Requiring written, species-specific enrichment plans for all AWA-protected animals

Animal welfare benefits include:

- Decreased incidence of abnormal and self-abusive behaviors
- Increased activity, learning ability, and adaptation to stressors
- Improved health and earlier detection of illnesses

Public benefits include:

- Serving the public's aesthetic interest in seeing animals living in humane conditions, which many courts have recognized.²⁷⁰

ii. Strengthening AWA regulations will benefit USDA and decrease litigation costs.

Strengthening AWA regulations will benefit USDA by reducing the need for costly litigation with animal protection groups, such as ALDF. If USDA devotes its resources towards adopting and enforcing regulations that ensure animal welfare, it can avoid the expense of defending the current, deficient regulatory regime, allowing both the Agency and animal advocates to devote their resources productively. For the same reasons, strengthening AWA regulations will benefit public interest groups like ALDF, since it will reduce their need to combat the inhumane exhibition of animals through expensive litigation.

iii. Complying with animal welfare requirements is the cost of doing business for regulated facilities.

Expanding AWA regulations will impose higher costs on facilities that currently provide little to no animal care staff training or species-specific enrichment, and that house captive animals in small, barren enclosures. These facilities must make structural investments in modifying enclosures to be species-appropriate and administrative investments in increasing staff capacity to provide species-specific care. However, regulated facilities' ability to profit from the animals that they research, breed, and exhibit is already conditioned on compliance with the AWA: it is simply the cost of doing business for these facilities.²⁷¹ USDA must clarify and strengthen the minimum standards for training, public contact, and enrichment to fulfill its statutory mandate of ensuring the humane treatment of animals. If the Agency does so, any resulting costs of complying with animal welfare requirements become the cost of doing business, as are the existing AWA license requirements. As the Court noted in *Associated Dog Clubs of New York State, Inc. v. Vilsack*, if regulated facilities must make significant changes to

²⁷⁰ See *Animal Legal Def. Fund, Inc., v. Glickman*, 154 F.3d 426, 432 (D.C. Cir. 1998) (recognizing a zoo visitor's "aesthetic interest in seeing exotic animals living in a nurturing habitat"); see also *Animal Welfare Institute v. Kreps*, 561 F.2d 1002, 1007 (D.C. Cir. 1977) (recognizing that people have a cognizable interest in "view[ing] animals free from 'inhumane treatment.'"); *Humane Society v. Hodel*, 840 F.2d 45, 52 (D.C. Cir. 1988) (recognizing "aesthetic injuries to members who complain of viewing the despoliation of animals"); *Didrickson v. United States Dep't of the Interior*, 982 F.2d 1332, 1340-41 (9th Cir. 1992) (same).

²⁷¹ 9 C.F.R. § 2.3.

their operations to in order to begin treating their animals humanely, it only reinforces the need for strengthened regulations.²⁷²

* * * *

We look forward to the agency incorporating this comment into its forthcoming Proposed Rule to ensure the welfare of all regulated animals as required by the AWA.

Sincerely,

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²⁷² 75 F. Supp. 3d 83, 93 (D.D.C. 2014).