DEPOSING A TIGER KING: HOW THE BIG CAT PUBLIC SAFETY ACT IS CHANGING THE LEGAL FRAMEWORK OF PRIVATE PET OWNERSHIP & COMMERCIAL EXHIBITION OF EXOTIC SPECIES

ASHLEY LANDWERLEN

I. INTRODUCTION

In the spring of 2020, the world was hit with an unprecedented pandemic, sequestering families and individuals to their homes. Then, in the weeks following the COVID-19 quarantine mandate, another contagion of sorts swept the nation in the form of a Netflix true crime docuseries, *Tiger King: Murder, Mayhem, and Madness.*[1]

The series follows the life of big cat breeder and then-owner and operator of the Oklahoma-based Greater Wynnewood Exotic Animal Park ("G.W. Zoo"), Joseph Maldonado-Passage, professionally known as Joe Exotic—the self-proclaimed "Tiger King."[2]

The documentary sheds light on the interconnected society of roadside zoos, exotic pet breeders, dealers, collectors, and keepers in America.[3] Animal rights activist Carole Baskin, the founder and CEO of Big Cat Rescue, an animal sanctuary formally located in Tampa, Florida, accuses the Tiger King of animal abuse and exploitation via his tiger cub petting programs.[4] The documentary recounts the intense rivalry between Exotic and Baskin, including his hiring of a hitman to silence her advocacy to end private ownership and breeding of big cats in the U.S.[5]

Ultimately, a federal grand jury found Exotic guilty of two

1. TIGER KING: MURDER, MAYHEM, AND MADNESS (Netflix 2020) (hereinafter TIGER KING); *see* Todd Spangler, *'Tiger King' Nabbed Over 34 Million U.S. Viewers in First 10 Days, Nielsen Says (EXCLUSIVE)*, VARIETY (Apr. 8, 2020), https://variety.com/2020/digital/news/tiger-king-nielsen-viewership-data-stranger-things-1234573602/.

2. TIGER KING, *supra* note 1.

3. *Id.*

4. *Id.*; *see also* United States v. Maldonado-Passage, 4 F.4th 1097, 1099-1100 (10th Cir. 2021).

5. *See Maldonado-Passage*, 4 F.4th at 1100.

counts of murder-for-hire and nineteen counts of wildlife crimes, including violation of the Lacey Act by falsifying wildlife records and of the Endangered Species Act ("ESA") by personally killing five tigers and selling tigers interstate.[6] Thereafter, Exotic was sentenced to twenty-two years in federal prison, which was reduced by one year on appeal.[7]

By exposing the dark underworld of roadside zoos to millions of viewers, the *Tiger King* documentary stimulated political will to address the inhumane captive big cat management practices that have come to be associated with private pet ownership and commercial roadside exhibition.[8] Thus, following a decade of legislative work, the bipartisan Big Cat Public Safety Act ("BCPSA") stands as a landmark piece of federal legislation.[9] The BCPSA ends private pet ownership and breeding of lions, tigers, leopards, cheetahs, jaguars, cougars, or any hybrid of such species (i.e., "big cats") and prohibits exhibitors from allowing the public to make direct contact with a big cat, including a cub.[10] Nevertheless, given that its scope is limited to species of big cats, this Note advances the proposition that the BCPSA provides a workable three-pillar framework to strengthen legal protections for other similarly situated captive exotic species common to private pet ownership and commercial roadside exhibition, such as the gray wolf and American alligator.

This Note is divided into four parts: Part I explores how the minimum standards, limited scope, and lack of enforcement of the Animal Welfare Act ("AWA") result in vast differences in animal welfare, care, and management among commercial exhibitors, breeders, and private pet owners of exotic species. While the terms "exotic species" or "exotic animal" do not have a set legal meaning, for this Note, the terms refer to a wild animal or one that is more unusual or rare than domesticated pets like dogs or cats. Part II explores how the BCPSA's strategic amendment of the Lacey Act (versus the AWA) strengthens federal wildlife protection laws, including the Captive Wildlife Safety Act ("CWSA") and the ESA. Part III provides an analysis of the BCPSA's tripartite framework. Part IV anticipates a changing legal landscape of captive exotic

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6. *Id.* at 1101-02.

7. *Id.* at 1108.

8. *See* TIGER KING, *supra* note 1; RECKLESS TIGER CUB PETTING ZOO: THE HUMANE SOCIETY OF THE UNITED STATES INVESTIGATES GW EXOTIC ANIMAL PARK, HUMANE SOC'Y OF THE U.S., https://www.humanesociety.org/sites/default/files/docs/investigative-report-gw-exotic-animal-park.pdf; Spangler, *supra* note 1.

9. *See* Emily Brooks, *Bill restricting big cat ownership made famous by 'Tiger King' heads to Biden's desk*, THE HILL (Dec. 6, 2022), https://thehill.com/homenews/senate/3764378-bill-restricting-big-cat-ownership-made-famous-by-tiger-king-heads-to-bidens-desk/.

10. 16 U.S.C. §§ 3372(e)(1), 3371(h); 50 C.F.R. § 14.252.

animal ownership, breeding, management, and public display by applying the Act's framework to private pet ownership and commercial exhibition of the gray wolf and American alligator.

II. UP AHEAD, NEXT EXIT: AMERICA'S UNACCREDITED "ROADSIDE" ZOOS

Drive along a U.S. highway, and you will likely encounter a billboard advertising a small and often remote wildlife tourist attraction promising its visitors memorable encounters to see, feed, touch, or play with the world's most exotic animals. Similar to the G.W. Zoo featured in the *Tiger King*, these unaccredited and for-profit privately-owned wildlife menageries, colloquially known as roadside zoos, have gained increasing attention concerning claims of dangerous public interactions, unlawful wildlife trafficking, severe animal neglect and cruelty, and the use of inhumane and unsustainable surplus breeding practices.[11]

A. The Animal Welfare Act: Inadequate Federal Oversight of Captive Animals

On the federal level, the AWA sets the minimum standards governing the humane care, housing, treatment, handling, sale, and transport of captive animals as defined by the Act.[12] The AWA provides broad protections for animals bred for commercial sale (e.g., animal breeders and dealers, except for retail pet stores),[13] exhibition (e.g., zoos, aquariums, circuses, educational programs),[14] research,[15] or commercial transport.[16] The AWA applies to warm-blooded animals common to zoological parks and aquariums such as

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11. *See, e.g.*, HUMANE SOC'Y OF THE U.S., *supra* note 8 (revealing tiger cubs were punched, dragged, hit, and whipped during "training" at the G.W. Zoo. Visitors, including children, were bitten, scratched and knocked down by tiger cubs, some of whom were too mature for public handling or photo sessions); Wayne Pacelle, *HSUS Undercover Investigations at Roadside Zoos in Virginia, Oklahoma Reveal Severe Abuse*, HUFFPOST (Jan. 22, 20515), https://www.huffpost.com/entry/hsus-undercover-investiga_b_6527062 (describing roadside zoo owners who cut corners and exploited animals, particularly in cub breeding and cub photo-op programs); Rachel Fobar, *USDA accused of ignoring animal welfare violations in favor of business interests*, NAT'L GEOGRAPHIC (Oct. 13, 2021), https://www.nationalgeographic.com/animals/article/usda-accused-of-ignoring-animal-welfare-for-business-interests (stating that a USDA official inspection record of California-based Monterey Zoo, formerly known as Wild Things Animal Rentals, Inc., made no mention of an internal memo by two USDA inspectors reporting the zoo's possible infractions of the AWA).

12. *See* 7 U.S.C. §§ 2131-2156; ELENI BICKELL, CONG. RSCH. SERV., R47179, THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ISSUES 4 (2023).

13. 7 U.S.C. § 2132(f).

14. *Id.* § 2132(h).

15. *Id.* § 2132(e).

16. *Id.* § 2132(i)-(j).

big cats, wolves, bears, great apes, monkeys, and marine mammals.[17] However, the AWA excludes cold-blooded vertebrate animals (i.e., fish, reptiles, and amphibians), invertebrate animals (e.g., crustaceans), birds, mice, and rats used in research, horses not used in research, and farm animals used for food or fiber.[18]

The AWA requires a valid U.S. Department of Agriculture ("USDA") license to operate a business involving animals as defined by the Act; this applies to persons or entities categorized as commercial breeders (Class A licensees), dealers (Class B licensees), or exhibitors (Class C licensees).[19] Under the USDA, the Animal and Plant Health Inspection Service ("APHIS") administers enforcement of the AWA by conducting unannounced compliance inspections.[20] Failure to correct non-compliance identified during an inspection may result in warnings, animal confiscation, fines, cease-and-desist orders, license suspension, license revocation, or criminal prosecution.[21]

B. Not All Zoos are Created Equal: Unaccredited Roadside Zoos Versus Accredited Zoos

Despite the AWA's commercial licensure and inspection requirements, not all USDA Class C exhibitors of captive exotic animals are created equal.[22] The minimum standards set by the Act, its accompanying regulations, and a demonstrated lack of enforcement by APHIS are often criticized as being insufficient to protect exotic animals common to public display.[23] As a result, the regulatory inadequacies of the AWA, coupled with the inconsistent strength and scope of state animal welfare and cruelty laws, create significant discrepancies in the management practices utilized among the nation's captive exotic animal population.[24] These discrepancies become evident when comparing the quality of animal

17. *See id.* § 2132(g).
18. *See id.*
19. *Id.* § 2134; 9 C.F.R. § 2.1(a)(1) (2023); 9 C.F.R. § 1.1 (2023).
20. 7 U.S.C. § 2147; 9 C.F.R. § 2.3 (2023); BICKELL, *supra* note 12, at 8.
21. 7 U.S.C. § 2149.
22. *See* Kailer Riedman et al., *Does Accreditation by the Association of Zoos and Aquariums Correlate with Animal Welfare Act Compliance?*, 26 J. APPLIED ANIMAL WELFARE SCI. 685, 685-92 (2022); Morgane Tidière et al., *Survival improvements of marine mammals in zoological institutions mirror historical advances in human longevity*, 290 PROC. ROYAL SOC'Y B. 2009, 6-7 (2023).
23. *See, e.g.*, BICKELL, *supra* note 12, at 10-12; Justin Marceau, *How the Animal Welfare Act Harms Animals*, 69 HASTINGS L.J. 925, 943 (2018); Leslie Rudloff, *Failure to Launch: The Lack of Implementation and Enforcement of the Animal Welfare Act*, 67 SYRACUSE L. REV. 173, 182-84; Letter from Mike Quigley et al., Members of Congress, to Kevin Shea, USDA Admin. (Apr. 27, 2020), https://awionline.org/sites/default/files/uploads/documents/WA-TigerKing-SignOnLetter.
24. *See* Riedman et al., *supra* note 22, at 685-92.

care and management administered by unaccredited versus accredited zoos.[25]

1. The Truth Behind the Selfie: Unaccredited Zoos & the Animal Welfare Impacts of Roadside Cub Petting & Photo-Op Programs

There are an estimated 3,000 unaccredited roadside zoos in forty-four U.S. states.[26] Given the lack of resources and professional expertise at unaccredited facilities, animals kept at such facilities often are confined to small and overcrowded conflict-prone cages, live in unsanitary conditions, are provided inadequate food, water, and veterinary care, lack mental stimulation, are subject to inhumane surplus breeding, and are used to promote dangerous interactions with members of the public, such as feeding or touching a tiger cub.[27]

An estimated 5,000 to 15,000 tigers (*Panthera tigris*) live in captivity in the U.S., with fewer than 4,000 remaining in the wild.[28]

While the U.S. captive tiger estimation may give the impression that the species is thriving, globally, tigers are listed as endangered on the International Union for Conservation of Nature's ("IUCN") Red List of Threatened Species.[29] Owners of roadside facilities, like Joe Exotic's G.W. Zoo, often claim their profitable cub petting programs support the global efforts of wildlife conservation by funding projects abroad and by aiming to educate the public on species endangerment.[30] Also, roadside zoos frequently claim their captive breeding practices will aid in the ultimate goal of delisting an endangered or threatened species from the ESA.[31] However, for

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25. *See id.*

26. *See* Martha Drouet & Asia Siev, MICH. STATE UNIV. COLL. OF L.: ANIMAL LEGAL & HIST. CTR., *Detailed Discussion of Exotic Pet Laws Update, Exotic Pet Laws* (2022), https://www.animallaw.info/article/detailed-discussion-exotic-pet-laws-update; Tala DiBenedetto, *Detailed Discussion of Welfare Standards for Animals Used in Zoos and Exhibition*, MICH. STATE UNIV. COLL. OF L.: ANIMAL LEGAL & HIST. CTR. (2020), https://www.animallaw.info/article/detailed-discussion-welfare-standards-animals-used-zoos-and-exhibition#id-13.

27. *See, e.g.*, Pacelle, *supra* note 11.

28. *Big News for Big Cats*, LEWIS & CLARK L. SCH.: CTR. FOR ANIMAL LEGAL STUD. (Feb. 21, 2023), https://law.lclark.edu/live/news/50481-big-news-for-big-cats.

29. Lynam Goodrich et al., *Panthera tigris, Tiger*, THE IUCN RED LIST OF THREATENED SPECIES (2022), http://dx.doi.org/10.2305/IUCN.UK.2015-2.RLTS.T15955A50659951.en.

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

31. *See* Cassady Cohick, Comment, *The Forgotten Cool Cats and Kittens: How a Lack of Federal Oversight in the USDA Led to Inhumane Loopholes in the Exploitation of Big Cats in America*, 6 ADMIN. L. REV. ACCORD 125, 132 (2021).

various reasons, very few (if any) captive-bred big cats in the U.S. will ever be released back into their native environments to replenish dwindling populations.[32]

In reality, cub petting programs exploit the public's affection toward baby animals to generate profits under a "pay-to-play" business scheme.[33] Under such a scheme, a young animal is used as a prop for photos, selfies, and petting by paying customers.[34]

While the customer is likely unaware of the animal neglect and cruelty implications involved, the profits gained perpetuate an inhumane breeding cycle, which relies on excessive and continuous breeding of big cats.[35] Offspring of captive surplus breeding practices often suffer severe congenital deformities when selectively bred and inbred for specific physical traits, especially for white tigers and hybrid big cats.[36] Congenital health problems include cleft palates, immune deficiencies, mental impairments, gigantism, spinal problems, lameness, issues with lung development, and others.[37]

Essentially, the surplus breeding practices used to supply roadside cub petting programs are characterized by the following cycle: (1) a cub is forcibly taken from its mother and enters the cub petting program immediately after its birth.[38] Apart from the apparent animal cruelty concerns of repeatedly separating a mother and her cubs, immediately removing newborn cubs sends the mother into estrus more quickly, where a heat cycle occurs every twenty-five days on average, resulting in her producing litter after

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32. *Tiger King: why can't we just release America's captive tigers into the wild?* UNIV. OF READING, https://research.reading.ac.uk/research-blog/tiger-king-why-cant-we-just-release-americas-captive-tigers-into-the-wild/#:~:text=Captive%20tigers%20and%20survival&text=The%20problem%20is%20that%20captive,their%20fitness%20and%20hunting%20ability (last visited Apr. 19, 2024) (long-term captive animals seldom learn crucial hunting skills, are habituated toward humans, and captive big cats are often inbred, which reduces genetic diversity and compromises overall health, leading to increased chronic illness and mortality).

33. *See* Saryn Chorney et al., *Poor Welfare Indicators and Husbandry Practices at Lion (Panthera Leo) "Cub-Petting" Facilities: Evidence from Public YouTube Videos*, 12 ANIMALS 20, 2 (2022); Tom Moorhouse et al., *Unethical Use of Wildlife in Tourism: What's the Problem, Who Is Responsible, and What Can Be Done?*, 25 J. SUSTAIN. TOUR. 4, 505-06 (2017).

34. Chorney et al., *supra* note 33, at 3.

35. *Id.* at 2.

36. *See Captive v. Wild: Why breeding tigers for entertainment is not conservation*, WORLD WILDLIFE FUND, https://tigers.panda.org/news_and_stories/stories/why_breeding_tigers_for_entertainment_is_not_conservation (last visited Nov. 8, 2023) [hereinafter WWF].

37. Chorney et al., *supra* note 33, at 10; *see PETA Decimates the Cruel Cub-Petting Industry*, PETA (Jul. 17, 2023), https://prime.peta.org/news/peta-decimates-the-cruel-cub-petting-industry/.

38. Steve Winter & Sharon Guynup, *Inside our two-year investigation of the captive tiger industry*, NAT'L GEOGRAPHIC (Nov. 2, 2023), https://www.nationalgeographic.com/animals/article/captive-tigers-wildlife-crime-eliza-scidmore-award.

litter.[39] In the wild, female tigers breed approximately every two and half years, allowing the cub six months to wean and the adult female time to teach the cub necessary hunting skills.[40] (2) To maximize profits, an individual cub is handled by customer after customer, day after day, until the cub is approximately twelve weeks old.[41]

A recent South African study examined the stress responses of lion cubs (*Panthera leo*) handled by tourists during cub photo-op programs and found that cub petting caused acute negative welfare impacts while normalizing cub petting and perpetuating inhumane and unsustainable captive breeding.[42] (3) Once a cub is too big and dangerous to be handled, it is either used for breeding more cubs, sold at high profits on the illegal black market for parts (i.e., fur, bones, organs, blood, "canned" trophy hunts, etc.), sold via the exotic pet trade to other animal collectors, where the breeding cycle continues, or inhumanely killed to avoid feeding costs.[43] Methods used by roadside facilities to kill a cub that is no longer useful for photo-ops include beating the cub with a baseball bat or hammer.[44]

2. Accredited Zoos Achieve & Maintain High Standards of Animal Welfare, Care, and Management

Unlike unaccredited roadside zoos, accredited facilities must achieve and maintain high animal welfare, care, and management standards set by private accreditation associations, such as the Association of Zoos and Aquariums ("AZA").[45] AZA-accredited institutions seek to maximize animal healthcare, nutrition, habitat sanitation, husbandry, humane and sustainable breeding, and public education.[46] They also strategically evaluate the benefits and risks of direct human-animal contact.[47] Accredited facilities provide

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39. Rachael Bale, *Key facts that 'Tiger King' missed about captive tigers*, NAT'L GEOGRAPHIC (Apr. 1, 2020), https://www.nationalgeographic.com/animals/article/captive-tigers-joe-exotic-tiger-king; *Tiger (Panthera tigris) Fact Sheet: Reproduction & Development*, SAN DIEGO ZOO WILDLIFE ALL., https://ielc.libguides.com/sdzg/factsheets/tiger/reproduction (last visited Nov. 19, 2023).

40. *See* WWF, *supra* note 36.

41. Kitty Block & Sara Amundson, *After the 'Tiger King' era, new ways to help other captive wild animals*, HUMANE SOC'Y OF THE U.S. (Apr. 6, 2023), https://www.humanesociety.org/blog/after-tiger-king-era-new-ways-help-other-captive-wild-animals.

42. Chorney et al., *supra* note 33, at 9-12; Winter & Guynup, *supra* note 38.

43. Chorney et al., *supra* note 33, at 11; Winter & Guynup, *supra* note 38.

44. Josh Wigler, *"Tiger King": PETA Lawyer Reveals What "Viewers Didn't Get to See" in Netflix Doc*, HOLLYWOOD REP. (Apr. 3, 2020) (Brittany Peet, a PETA Foundation lawyer, describing how many exhibitors will get rid of or kill tiger cubs once they age out of use for cub petting).

45. *See* DiBenedetto, *supra* note 26.

46. *See* THE ACCREDITATION STANDARDS & RELATED POLICIES, ASSOC. OF ZOOS & AQUARIUMS 13 (2023), https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf.

47. *Id.*

animals with daily mental stimulation through physical, social, and environmental enrichment.[48] Highly educated and professionally trained staff form strong human-animal relationships, keep detailed records, and implement complex management programs to optimize an animal's well-being and overall quality of life.[49]

Thus, compared to unaccredited zoos, the high standards set by private accreditation associations and achieved by qualifying facilities ensure a high standard of animal welfare, care, and management beyond the minimum standards prescribed by federal and state animal welfare laws.[50] However, of the approximately 2,800 USDA-licensed exhibitors across the U.S., less than ten percent are accredited by the AZA.[51] Thus, when seeking to address systemic animal welfare and public safety issues prevalent among unaccredited USDA-licensed facilities, reliance on achieving accreditation is not a viable alternative to strengthening uniform federal regulation of captive animals commercially bred and publicly exhibited.[52]

C. Inadequate Regulation of Private Exotic Pet Ownership & Small-Scale Breeding

Thus far, this Note has discussed the AWA's regulation of commercially bred and exhibited exotic species. As discussed above, the AWA is limited in scope to regulating establishments where captive animals are, in some capacity, involved in a chain of commerce.[53] Thus, private possession and small-scale breeding of exotic pets is not regulated at the federal level under the AWA.[54] Accordingly, where private possession and small-scale breeding occurs intrastate, owners may fraudulently pose as a USDA licensee without having to conform to AWA standards or may exploit loopholes among a patchwork of lax, inconsistent, and infrequently prosecuted state and local animal welfare and cruelty laws.[55]

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48. *See id.* at 20.

49. *See id.*

50. *See* Riedman et al., *supra* note 22, at 1-7.

51. *See Accreditation FAQ: What Percentage of Zoos and Aquariums are Accredited by AZA?*, ASSOC. OF ZOOS & AQUARIUMS, https://www.aza.org/accredfaq?locale=en#:~:text=Of%20the%20approximately%202%2C800%20animal,meet%20our%20rigorous%20accreditation%20standards (last visited Nov. 8, 2023).

52. *See, e.g.*, Riedman et al., *supra* note 22, at 5-7.

53. *See* 7 U.S.C. § 2131 (The AWA as amended defines *commerce* as including "trade, traffic, transportation, or other commerce." 7 U.S.C. § 2132(c)).

54. *See id.*

55. *See* Drouet & Siev, *supra* note 26; MICHELLE KIRBY, CONN. GEN. ASSEMB. OFFICE LEGIS. RSCH., 2018-R-0111, ANIMAL CRUELTY CASES IN CONNECTICUT (2007-2017) (2018) (A summary of Connecticut's primary animal cruelty statute shows that between 2007 to 2017 of the 3,480 animal cruelty cases initiated, 45% were never prosecuted; and 35% were dismissed).

For instance, before the enactment of the BCPSA, the USDA left to the states the regulation of intrastate private ownership of big cats as pets (versus big cats kept for commercial activities).[56]

As such, private owners of pet big cats were under no obligation to federally register the animals under their possession.[57]

Without a federal registration requirement, the number of pet big cats among America's backyards resulted in speculative population estimates.[58] Thus, the welfare of pet big cats hinged on inconsistent state and local laws, creating a substantial risk to public safety, especially for first responders or during instances of an animal's escape or intentional release.[59]

For example, in 2011, Terry Thompson, owner of a hobbyist exotic animal farm in Zanesville, Ohio, committed suicide after intentionally releasing fifty of his fifty-six exotic animals from his property.[60] As a small-scale hobby breeder who did not commercially deal or publicly exhibit animals, Thompson was not subject to AWA licensing and care requirements.[61] Thus, Thompson fell through the cracks of regulatory oversight because, at the time, Ohio did not restrict or regulate private ownership of exotic animals within the state.[62] Once the animals were intentionally released, animal control and law enforcement officers were not equipped to recapture eighteen tigers, seventeen lions, eight bears, three cougars, two wolves, one baboon, and one macaque.[63] Thus, officers resorted to using lethal force to gain control of the dangerous situation, resulting in forty-nine animal deaths.[64]

III. TO CONSERVE & PROTECT: THE BCPSA'S STRATEGIC AMENDMENT TO THE LACEY ACT (VERSUS THE AWA) STRENGTHENS THE HUMANE MANAGEMENT OF CAPTIVE BIG CATS

During the Rules Committee July 26, 2022, BCPSA cosponsor, U.S. Representative Ed Case (HI-01), called on Congress to create a

56. Cohick, *supra* note 31, at 136.

57. *See id.* at 129, 133, 135.

58. Winter & Guynup, *supra* note 38.

59. *See, e.g.*, Chris Heath, *18 Tigers, 17 Lions, 8 Bears, 3 Cougars, 2 Wolves, 1 Baboon, 1 Macaque, and 1 Man Dead in Ohio*, GQ MAGAZINE (Feb. 6, 2012), http://www.gq.com/news-politics/newsmakers/201203/terry-thompson-ohio-zoo-massacre-chris-heath-gq-february-2012.

60. *Id.*

61. Drouet & Siev, *supra* note 26, at Section III, Part C.

62. *See* OHIO REV. CODE ANN. § 935.02 (West 2012) (in response to the Thompson incident, Ohio passed a new statutory scheme in 2012, effective January 1, 2014, which bars anyone from owning a "dangerous wild animal").

63. Heath, *supra* note 59.

64. *Id.*

more stringent federal standard for private ownership, breeding, and display of big cats in the U.S.[65] In response, opponents raised three primary challenges to the BCPSA's amending the Lacey Act.[66] First, opponents argued that the BCPSA blatantly superseded state law and the authority conferred by the AWA to APHIS to regulate captive big cats.[67]

Second, opponents argued that the BCPSA created a duplicative regulatory authority, considering regulation already existed under the AWA to oversee the humane treatment and public display of big cats.[68]

Third, opponents argued that the U.S. Fish & Wildlife Service ("FWS") under the Lacey Act was ill-equipped and lacked agency expertise to administer appropriate intrastate law enforcement compared to the USDA and APHIS under the AWA.[69] Thus, opponents felt an amendment to the AWA, instead of the Lacey Act, would efficiently accomplish the objectives of the BCPSA without unnecessary federal overreach, regulatory duplication, or concerns of effective law enforcement.[70]

Sponsors of the BCPSA countered that the AWA only sets basic animal welfare standards and, contrary to the opponent's duplicative argument, no federal law existed to regulate the private ownership and breeding of big cats.[71] As a result, enactment of the BCPSA would effectively strengthen, support, and expand protections already in place under the Lacey Act.[72] More specifically, the BCPSA's amending the Lacey Act would support state, federal, and international wildlife conservation objectives by expanding the jurisdiction of the FWS—an agency with regulatory authority and expertise in combating illegal wildlife trafficking under the Lacey Act and conservation of endangered terrestrial species under the ESA.[73]

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65. *See Hearing on H.R. 4040 and H.R. 263 Before the H. Comm. on Rules*, *supra* note 65 (statement of Rep. Ed Case).

66. *Id.* (statement of Rep. Brue Westerman).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *See Hearing on H.R. 4040 and H.R. 263 Before the H. Comm. on Rules, supra* note 65 (statement of Rep. Ed Case); *see also Map of Private Exotic Pet Ownership Laws*, MICH. STATE UNIV.: COLL. OF L., ANIMAL LEGAL & HIST. CTR., https://www.animallaw.info/content/map-private-exotic-pet-ownership-laws (last visited Feb. 11, 2024) (map details an inconsistent patchwork of state statutory and regulatory schemes that ban, partially ban, require licensure, or provide miscellaneous regulations on private ownership of wild or exotic animals).

72. *Hearing on H.R. 4040 and H.R. 263 Before the H. Comm. on Rules*, supra 65.

73. *Id.*; *see* 18 U.S.C. § 42; 16 U.S.C. § 1531 *et seq.*

A. The Lacey Act: The Nation's Most Powerful Weapon in the Fight Against Illegal Wildlife Trafficking

Illegal wildlife trafficking is a multibillion-dollar global industry, where high demand for exotic pets and exotic animal parts (furs, skins, feathers, fins, trophies, skulls, bones, tusks, ingredients in traditional Eastern medicines, etc.) generates an estimated $7.8 billion to $10 billion per year.[74] Like many markets, the ease with which exotic animals are advertised or auctioned online contributes to their trade.[75] Social media has significantly impacted the rise of the exotic pet trade by creating a "viral" appeal among social media users who seek to purchase an exotic animal to personally share in its popularity and post pictures and videos online.[76]

For example, Slow Lorises (genus *Nycticebus*) are protected by Southeast Asian law and the Convention on International Trade in Endangered Species of Fauna and Flora ("CITES").[77] However, a viral YouTube video of the teddy-bear-like primate—a species unfamiliar to the general public before the video went viral—resulted in its near extinction when poachers and traffickers sought to profit from the acute demand generated by social media audiences.[78]

The Lacey Act, enacted in 1900, is the nation's oldest national wildlife protection statute and chief among the federal provisions protecting against the illegal trade of wild or exotic animals.[79]

Under the Lacey Act, as amended, "it is unlawful for any person . . . to import, export, transport, sell . . . any fish or wildlife . . . taken, possessed, transported, or sold in violation of any law, treaty, or regulation",[80] including an "attempt to commit any such act."[81]

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74. *End Wildlife Trafficking*, U.S. IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/features/wildlife#:~:text=Illicit%20wildlife%20trafficking%20is%20estimated,as%20%247%20billion%20per%20year (last visited Nov. 9, 2023).

75. *See* U.N. OFF. ON DRUGS & CRIME, WORLD WILDLIFE CRIME REPORT: TRAFFICKING IN PROTECTED SPECIES 25 (2020), https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf.

76. *See* K.A.I. Nekaris & Carly Starr, *Conservation and Ecology of the Neglected Slow Loris: Priorities and Prospects*, 28 ENDANGERED SPECIES RSCH. 87, 88 (2015), https://www.int-res.com/articles/esr2015/28/n028p087.pdf.

77. *Id.* at 88-90.

78. *Id.* at 88; *see* K. Anne-Isola Nekaris et al., *Tickled to Death: Analyzing Public Perceptions of 'Cute' Videos of Threatened Species (Slow Lorises–Nycticebus spp.) on Web 2.0 Sites*, 8 PLOS ONE 1, 2-3, 9 (2013), https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0069215&type=printable.

79. *See* 16 U.S.C. §§ 3371-3378; Robert Anderson, *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV 27, 29-30 (1995).

80. 16 U.S.C. § 3372(a)(1).

81. *Id.* § 3372(a)(4).

Thus, the backbone of the Lacey Act's fight for species conservation is its reinforcement of state, tribal, and foreign conservation laws.[82] Notably, the Act applies to a broader array of wild or exotic animals than does the AWA, by defining the term "fish or wildlife" as "any wild animal, whether alive or dead, including . . . any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, *whether or not bred, hatched, or born in captivity*, and includes any part, product, egg, or offspring thereof."[83]

However, despite the Lacey Act's strengths, in 2003, a U.S. Senate report found that the Act failed to explicitly address public safety issues arising from an increasing U.S. captive big cat trade.[84]

Consequently, the Captive Wildlife Safety Act of 2003 ("CWSA"), amended the Lacey Act Amendment of 1981, making it illegal for "any person to import, export, transport, sell, receive, acquire, or purchase [big cats], in interstate or foreign commerce."[85]

Nevertheless, the CWSA did not expressly prohibit private ownership and breeding of big cats.[86] Also, the Act exempted USDA-licensed, registered, and inspected persons and only prohibited accredited wildlife sanctuaries from allowing the public to make direct contact with a big cat.[87] Thus, USDA-licensed roadside zoos continued exploiting animals via their cub petting programs, allowing the industry to profit from inhumane surplus breeding and illicit interstate movement of big cats and their parts.[88]

Accordingly, as discussed in more detail below, the BCPSA builds on the CWSA by providing a uniform federal policy for the issues arising from big cat ownership, breeding, trade, and exhibition.[89]

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82. *See* Anderson, *supra* note 79, at 30.

83. 16 U.S.C. § 3371(a) (emphasis added).

84. S. REP. NO. 108-172, at 1 (2003), https://www.govinfo.gov/content/pkg/CRPT-108srpt172/html/CRPT-108srpt172.htm.

85. Captive Wildlife Safety Act, Pub. L. No. 108-191, § 3(a)(1), 117 Stat. 2871 (2003) (codified as 16 U.S.C. §§ 3371-72) (The CWSA defines "prohibited wildlife species" as "any live species of lion, tiger, leopard, cheetah, jaguar, or cougar, or any hybrid of such species" (i.e., "big cats")).

86. *See id.* at §§ 2-3.

87. *Id.* at § 3(a)(2).

88. *See, e.g.*, Pacelle, *supra* note 11.; *see also* BIG CAT INCIDENTS IN THE U.S., PETA, https://www.peta.org/wp-content/uploads/2021/06/BigCatIncidentList.pdf (last visited Apr. 9, 2024).

89. Big Cat Public Safety Act, Pub. L. No. 117-243, 136 Stat. 2336 (2022); *see also Hearing on H.R. 4040 and H.R. 263 Before the H. Comm. on Rules*, *supra* note 65 (statement by Rep. Ed Case); *Map of Private Exotic Pet Ownership Laws*, MICH. STATE UNIV. COLL. OF L.: ANIMAL LEGAL & HIST. CTR. (2022), www.animallaw.info/content/map-private-exotic-pet-ownership-laws.

B. The Role of the Endangered Species Act in Protecting Endangered Captive Exotic Animals

The U.S. Supreme Court describes the ESA as the nation's "most comprehensive legislation for the preservation of endangered species ever enacted by any nation."[90] Under the ESA, it is illegal to possess, buy, sell, import, export, transport, or "take" (i.e., "harm" or "harass") an endangered captive or wild animal unless a person obtains an appropriate permit.[91]

Critical to the discussion of captive big cats is the fact that most species are listed as endangered and, therefore, protected under the ESA.[92]

How, then, can such a powerful federal law allow commercial exhibitors, such as the Tiger King, to possess and breed endangered species in clear violation of the conservation objectives of the Act? First, the primary purpose of the ESA focuses on habitat and species conservation, not on animal welfare *per se*.[93] Also, commercial dealers and exhibitors of endangered species may exploit potential loopholes provided by the ESA's exceptions (i.e., its permitting scheme).[94] For instance, while the ESA's captive-bred wildlife permit places restrictions on commercial breeding and trade, historically, the Act imposes less stringent and inconsistently enforced regulations for captive populations compared to free-roaming members of the same protected species.[95]

IV. LEGAL PROTECTIONS REQUIRE A STRONG FOUNDATION: THE BCPSA'S THREE-PILLAR FRAMEWORK

Generally, the BCPSA amends "the Lacey Amendments of 1981 to clarify provisions enacted by the [CWSA], to further the

90. Tenn. Valley Auth. v. Hill, 437 U.S. 153, 180 (1978).

91. 16 U.S.C. §§ 1532(19), 1538(a); 50 C.F.R. § 17.3 (FWS issues permits allowing for activities otherwise in violation of the ESA's general "take" prohibition, including permits for scientific research, enhancement of propagation or survival, or where a taking is incidental to an otherwise lawful activity.).

92. *Listed Animals*, U.S. FISH & WILDLIFE SERV. ENV'T CONSERV. ONLINE (ECOS), https://ecos.fws.gov/ecp0/reports/ad-hoc-species-report?kingdom=V&kingdom=I&status=E&status=T&status=EmE&status=EmT&status=EXPE&status=EXPN&status=SAE&status=SAT&mapstatus=3&fcrithab=on&fstatus=on&fspecrule=on&finvpop=on&fgroup=on&header=Listed+Animals (last visited Nov. 15, 2023) (hereinafter *Listed Animals*).

93. *See* 16 U.S.C. § 1531(b) ("The purposes of [the ESA] are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species . . .").

94. *See id.* § 1539.

95. *Id.*; 50 C.F.R. § 17.21(g); Kali Grech, MICH. STATE UNIV. COLL. OF L.: ANIMAL LEGAL & HIST. CTR., *Overview of the Laws Affecting Zoos* Part II A(ii) (2004), https://www.animallaw.info/article/detailed-discussion-laws-affecting-zoos.

conservation of certain wildlife species."[96] The definition of "prohibited wildlife species" remains unchanged from the amendments created by the CWSA, and is defined as "any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species" (i.e., big cats).[97] This list includes the following species: lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), clouded leopard (*Neofelis nebulosa*), jaguar (*Panthera onca*), cheetah (*Acinonyx jubatus*), and cougar (*Puma concolor*).[98]

Consistent with the Lacey Act, violators of the BCPSA are subject to civil and criminal penalties,[99] and big cats "bred, possessed, imported, exported, transported, sold, received, acquired, or purchased" contrary to the provisions of the Act are subject to forfeiture.[100] The BCPSA provides a three-pillar framework by (1) creating an absolute ban on direct physical contact between a member of the public and a big cat, (2) creating a ban on the breeding and possession of big cats by private owners, and (3) expanding federal regulatory oversight of intrastate trade of big cats where the "import, export, transport, [sale]" is conducted "in a manner substantially affecting interstate or foreign commerce."[101]

A. Absolute Prohibition Against Direct Physical Contact

The BCPSA prohibits an exhibitor from allowing direct physical contact between a member of the public and a big cat, including cubs.[102] However, USDA Class C exhibitors, state universities, and wildlife sanctuaries may allow certain qualified individuals (i.e., trained professional employees, employed trainees, contractors, licensed veterinarians, veterinarian students, and non-commercial conservation programs) to make direct contact with a big cat.[103] Furthermore, USDA-licensed exhibitors must ensure that during public exhibition, a big cat is at all times at least fifteen feet from members of the public unless there is a permanent barrier sufficient to prevent public contact.[104] Thus, while certain qualifying individuals may make direct contact with a big cat, the Act targets

96. Big Cat Public Safety Act, Pub. L. No. 117-243, Preamble, 136 Stat. 2336 (2022).
97. 16 U.S.C. § 3371(h); 50 C.F.R. § 14.252.
98. Sources cited *id.*; *Regulations to Implement the Big Cat Public Safety Act*, 88 Fed. Reg. 38358 (Jun. 12, 2023) (interim rule).
99. 16 U.S.C. § 3373.
100. *Id.* § 3374.
101. *See id.* § 3372(e).
102. *Id.* § 3372(e)(2).
103. *Id.* §§ 3372 (e)(2)(A)-(D) (stating that even where exempt, licensed persons and entities must not allow direct contact between the public and a big cat).
104. *Id.* § 3372(e)(2)(A)(ii).

the lifeblood of the unaccredited roadside zoo business model—its profitable tiger cub petting and photo-op programs.[105]

Another significant change regarding prohibiting direct contact concerns a trainee.[106] Under the BCPSA, direct physical contact between a trainee and a big cat is contingent upon the individual's employment with the licensed facility.[107] Thus, volunteer trainees are not permitted to make direct contact with a big cat.[108]

This change will likely create difficulties for volunteer trainees in jurisdictions where state licensure depends on demonstrating prerequisite professional training.[109] For instance, in Florida, those seeking Class I captive wildlife licensure, which includes species of big cats, must gain and demonstrate a requisite number of hands-on hours before the state will grant a permit to lawfully exhibit a Class I species.[110]

B. Prohibition Against Private Breeding & Possession

The BCPSA targets big cat private ownership by prohibiting "any person to breed or possess" a big cat.[111] However, under certain circumstances, commercial operations by USDA-licensed zoos, sanctuaries, and state universities are exempt from the Act's general breeding and possession prohibition.[112] Such stringent restrictions on big cat breeding establishes a significant regulatory change considering, before the enactment of the BCPSA, the Lacey Act and CWSA did not expressly prohibit big cat breeding.[113]

Regarding lawful possession, following enactment on December 20, 2022, the Act provided 180 days for private owners to seek grandfathered-in status to lawfully possess their pet big cats.[114]

The grandfathered-in clause, which expired on June 18, 2023, required the pet owner to (a) federally register each animal with the FWS within 180 days of enactment; (b) not breed, acquire, or sell

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105. *See* 16 U.S.C. § 3372(e).

106. *See id.* §§ 3372(e)(2)(A)-(D).

107. *Id.*

108. *Id.*

109. *See* FLA. ADMIN. CODE 68A-6.004(2)(c)(1) (requiring a Captive Wildlife Class I applicant, among other requirements, to "demonstrate no less than one year of substantial practical experience (to consist of no less than 1,000 hours) in the care, feeding, *handling* and husbandry of the species for which the permit is sought" (emphasis added)).

110. *Id.*

111. 16 U.S.C. § 3371(a) ("The term "breed" means to facilitate propagation or reproduction (whether intentionally or negligently), or to fail to prevent propagation or reproduction.")

112. *Id.* § 3372(e)(2)(A)-(D).

113. *See* Big Cat Public Safety Act, Pub. L. No. 117-243, § 2, 136 Stat. 2336 (2022).

114. 16 U.S.C. § 3372(e)(2)(E).

any big cat; and (c) not allow direct contact between the public and a big cat.[115]

C. Expansion of Federal Oversight: Regulating Intrastate Trade

Building upon the CWSA's general prohibition against the interstate "import, export, transport" of big cats, the BCPSA expressly states that it is unlawful for any person, unless exempt, to "import, export, transport, sell, receive, acquire or purchase" a big cat in a "manner *substantially affecting* interstate or foreign commerce."[116] While congressional power to regulate interstate commerce itself is plenary under the Commerce Clause, Congress's explicit use of the "substantially affecting" language in the BCPSA suggests its intent to regulate the big cat trade occurring wholly within state lines where such activities nevertheless have a substantial economic effect on commerce in other jurisdictions.[117]

V. THE FUTURE OF PRIVATE PET OWNERSHIP & COMMERCIAL EXHIBITION OF EXOTIC SPECIES

The prohibitions and restrictions created by the BCPSA raise an intriguing question for animal welfare advocates—what other captive species might benefit from similar federal protections? Given the BCPSA's limited definition of "prohibited wildlife species" (i.e., big cats), one can anticipate future legislative efforts to apply the Act's three-pillar framework to similarly situated species common to private pet ownership and commercial roadside exhibition, such as the gray wolf and American alligator.[118]

A. The BCPSA's Framework Applied to Similarly Endangered Species: Roadside Wolf Puppy Petting Programs & Pet Wolfdogs

On February 10, 2022, the U.S. District for the Northern District of California vacated and remanded a Trump-era FWS rule delisting the gray wolf (*Canis lupus*) from the ESA.[119] Accordingly, except for the Northern Rocky Mountain population, all gray wolves in the

115. *Id.*; 50 C.F.R Part 14 (2023).

116. 16 U.S.C. § 3372(e)(1)(A) (emphasis added).

117. U.S. CONST. art. I, § 8, cl. 3 (The U.S. Constitution grants Congress broad power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes").

118. *See* 16 U.S.C. § 3371(h).

119. Defs. of Wildlife v. U.S. Fish & Wildlife Serv., 584 F. Supp. 3d 812 (N.D. Cal. 2021).

contiguous forty-eight U.S. states are federally protected under the ESA.[120] For populations of captive gray wolves, the animal welfare and public safety issues consequent of private pet ownership and roadside exhibition are synonymous with those of captive big cats.[121]

First, like big cats, given the physical and behavioral characteristics of gray wolves, their captive mismanagement may pose a substantial risk to human safety. Gray wolves are the largest wild members of the *Canidae*, or dog family, with an average weight of roughly 100 pounds.[122] With predatory instincts similar to those of big cats, gray wolves have powerful jaws and are well-adapted for hunting and feeding on prey much larger than themselves.[123] Research by contemporary experts on gray wolf behavior and physiology finds that even where a wolf pup is reared under extensive human care, the animal nonetheless fails to demonstrate the enhanced cooperative-communication abilities displayed by domesticated dogs (*Canis familiaris*).[124]

For example, in 2021, a study compared hand-reared domesticated dog and wolf pups, five to eighteen weeks old, on a battery of temperament and cognition tasks.[125] The researchers found domesticated dog puppies were more attracted to humans, more skilled at reading human gestures, and were prepared to communicate with humans, given that they made more eye contact than wolf pups.[126] These results demonstrate that domesticated dogs possess specialized social skills, allowing them to live cooperatively with humans.[127] Simultaneously, however, the results suggest wolves (of any age), whose temperament is inclined to avoid human interaction and novel stimuli, are a species not suited for private pet ownership or commercial activities allowing the public to make direct physical contact.[128]

Second, like roadside exhibitors of captive big cats, roadside exhibitors of gray wolves often lack the requisite monetary

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120. *See* 2023 USFWS GRAY WOLF STATEMENT, U.S. FISH & WILDLIFE SERV. (2023), https://www.fws.gov/sites/default/files/documents/2023%20USFWS%20Gray%20Wolf%20Statement.pdf (FWS intends to submit a proposed rule concerning the ESA listing status of gray wolves in the lower forty-eight states by February 2, 2024).

121. *See, e.g.*, Animal Legal Def. Fund v. Fur-Ever Wild, No. 17-cv-4496, 2018 U.S. Dist. LEXIS 191348, at *2-3, *8 (D. Minn. Nov. 8, 2018).

122. *Gray Wolf: Overview*, U.S. FISH & WILDLIFE SERV., https://www.fws.gov/species/gray-wolf-canis-lupus (last visited Nov. 10, 2023).

123. *See* Daniel MacNulty, et al., *Ys 24-1 Understanding the Limits to Wolf Hunting Ability*, NAT'L PARK SERV., https://www.nps.gov/yell/learn/ys-24-1-understanding-the-limits-to-wolf-hunting-ability.htm (last visited Oct. 29, 2023).

124. Hannah Salomons et al., *Cooperative Communication with Humans Evolved to Emerge Early in Domestic Dogs*, 31 CURRENT BIOLOGY 3137, 3141-42 (2021).

125. *Id.* at 3137-38.

126. *Id.* at 3137-42.

127. *Id.* at 3141-42.

128. *See id.*

resources, behavioral knowledge, and access to veterinary care to optimize the animal's individualized and complex well-being.[129] For example, in 2018, Joe Exotic allegedly considered re-branding as the "Wolf King" by illegally transporting twenty-eight gray wolves from a Minnesota-based roadside zoo to his collection at the G.W. Zoo.[130.]

However, prior to his arrest that same year, the wolves proved too challenging for Exotic to handle and were rescued by Lockwood Animal Rescue Center ("Lockwood"), an accredited sanctuary in California.[131]

Third, like tiger cub petting programs, wolf pup petting programs incentivize inhumane surplus breeding practices and illicit interstate trade of an endangered species, which runs contrary to the objectives of the Lacey Act, AWA, ESA, and CITES.[132] For example, in 2017, Lockwood and the Animal Legal Defense Fund ("ALDF") sought an injunction and order to surrender animals located at Fur-Ever Wild Wolves, Woods, & Wildlife, a Minnesota-based for-profit public exhibitor and fur-harvesting business.[133] According to the plaintiff's complaint:

> The facility offers $20 'pet-n-plays' with the wolf puppies while they are young."[134] Then, "[u]nbeknownst to most visitors, Fur-Ever Wild kills the gray wolves in the winter after the puppies grow too old for the pet-n-play visitor interactions. Fur-Ever Wild pelts the gray wolves and other animals to profit from their skin, skulls, teeth, bones, and other parts sold on-site at the facility's gift shop and off-site events. As [Defendant] admitted in a deposition related to another lawsuit: 'I pelted two wolves last night… And there is another two going tonight… There will be 25 within the next [two to] three weeks.'[135]

Moreover, according to witness and USDA inspection reports, Fur-Ever Wild provided its gray wolves with inadequate veterinary

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129. *See, e.g.*, *Roadside Zoos: Small, unaccredited zoos where wild and exotic animals suffer in captivity*, ANIMAL LEGAL DEF. FUND, https://aldf.org/issue/roadside-zoos/ (last visited Feb. 20, 2024).

130. *Joe Exotic Tried Hard to be 'Wolf King' in 2018 Before Getting Shut Down*, TMZ.COM (Apr. 19, 2020, 1:00 AM), https://www.tmz.com/2020/04/19/joe-exotic-tiger-king-gray-wolves-animal-legal-defense-fund/.

131. *See Meet Our Wolves and Wolfdogs*, LOCKWOOD ANIMAL RESCUE CTR., https://lockwoodarc.org/larc-animals (last visited Nov. 9, 2023) ("Big Boy" is one of the wolves rescued by Lockwood and originally acquired by Joe Exotic from Fur-Ever-Wild, a Minnesota wolf fur farm and wolf cub "pet-n-play" facility).

132. *See, e.g.*, Animal Legal Def. Fund v. Fur-Ever Wild, No. 17-cv-4496, 2018 U.S. Dist. LEXIS 191348, at *1-2, *6 (D. Minn. Nov. 8, 2018).

133. *Id.* at *1-3.

134. Complaint at 3, Animal Legal Def. Fund v. Fur-Ever Wild, No. 17-CV-04496-JNE-HB, (D. Minn. 2019).

135. *Id.* at 4.

care, shelter, exercise, food, and water, and animals were observed with open, untreated wounds.[136] From the "period covering March 1, 2013, to February 28, 2014, the operation notes 19 wolves born and 19 deaths."[137] Thus, according to the plaintiffs, Fur-Ever Wild violated the ESA by failing to provide gray wolves with adequate care, killing young wolves when no longer pups, and selling their pelts and other parts for profit.[138] Ultimately, in 2019, the court ruled against Fur-Ever Wild on a motion for summary judgment, finding that the gray wolves at issue, even those with a small amount of detectable dog genes, were generally protected by the ESA.[139]

The court's ruling in *Fur-Ever Wild* raises an important and complicated issue related to captive-bred gray wolves—the legal and regulatory challenges of overseeing ownership and management of wolfdog hybrids (i.e., a wolf bred with a domesticated dog). Due to the ease of internet sales and a viral phenomenon generated by social media, ownership of wolves and wolfdogs has dramatically increased in popularity.[140] In the U.S., it is estimated that 250,000 to 500,000 gray wolves and wolfdogs are owned as pets.[141]

However, like big cat pet ownership before the enactment of the BCPSA, there is currently no federal registration requirement or uniform law regulating the management of pet wolves or wolfdogs.[142] Instead, regulation falls on state and local jurisdictions, which range from implementing a complete ban against owning pet wolves or wolf dogs, on the one hand, to limited or no regulatory restrictions, on the other.[143]

For example, neighboring states Florida, Georgia, and Alabama significantly differ in their approach to regulating pet wolves and wolfdogs. In Florida, purebred wolves are classified as Class II

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136. *Id.* at 5, 36-39.

137. *Id.* at 33.

138. *Id.* at 34-36, 49.

139. *See* Animal Legal Def. Fund v. Fur-Ever Wild, No. 17-CV-4496-JNE-HB, 2018 WL 2758580, *1-2 (D. Minn. Jan. 8, 2018); *Challenging Fur-Ever Wild's Treatment of Wolves*, ANIMAL LEGAL DEF. FUND, https://aldf.org/case/challenging-fur-ever-wilds-treatment-of-wolves/ (last visited Nov. 15, 2023) (the court found that Fur-Ever Wild's wolves were predominately wolf with small amounts of detectable dog genes, and did not preclude the possibility that ESA protection could extend to wolves with more recent dog ancestors in other cases).

140. *See* Lisa Bloch, *Wolf-dog hybrids are becoming more popular–and that's not a good thing*, THE MERCURY NEWS (Nov. 14, 2023), https://www.mercurynews.com/2023/11/14/wolf-dog-hybrids-are-becoming-more-popular-and-thats-not-a-good-thing/.

141. *See Wolf Dogs*, W.O.L.F. SANCTUARY, https://wolfsanctuary.co/wolf-dogs/#:~:text=In%20the%20United%20States%20alone,wolf%20dogs%20owned%20as%20pets (last visited Nov. 15, 2023).

142. *See Exotic Animal Laws by State*, FINDLAW, https://www.findlaw.com/injury/torts-and-personal-injuries/exotic-animal-laws-by-state.html (last visited Nov. 15, 2023).

143. *See* O.C.G.A. § 27-5-1 (2023); § 27-5-5; FLA. ADMIN. CODE § 68A-6.002(b); ALA. ADMIN. CODE r. 220-2-.26 (2023).

wildlife because they are considered to present an actual or potential threat to human safety.[144] Thus, possession of Class II wildlife for personal or commercial purposes requires a permit from the Florida Fish & Wildlife Conservation Commission ("FWC").[145]

However, where a purebred wolf is bred with a domesticated dog to produce a wolfdog hybrid, the regulations become less clear as to what percentage of wolf genealogy is necessary to trigger the permit requirement.[146] Comparatively, Georgia completely bans ownership of pet wolves and wolfdog hybrids,[147] while Alabama has no state-level prohibition or permit requirement.[148]

Resulting from inconsistent regulatory oversight, pet wolves and wolfdogs are often abandoned, neglected, and abused, leading to mistreatment, death, and, if forfeited, they are generally unadoptable by domestic animal services, leading to the animal's euthanasia.[149] Given the dramatic increase in wolf and wolfdog popularity as pets, and that roadside exhibitors now lack the profit they once generated from tiger cub petting programs, one can reasonably anticipate that the prevalence of captive pet ownership and commercial reliance on wolf pup petting programs will continue to rise.[150] Thus, applying the BCPSA's framework in future legislative efforts could provide captive endangered gray wolves and their hybrids with more robust federal protection.[151]

B. The American Alligator: Utilizing the BCPSA's Public Safety Framework to Protect Florida's Official State Reptile

Thus far, this Note has discussed applying the BCPSA framework to captive exotic species that, like big cats, are endangered and, therefore, protected under the ESA. However, consistent with its public safety element, might the framework provide for enhanced protection of species not listed under the ESA? Especially for abundant species, such as the American alligator (*Alligator mississippiensis*) that, unlike tiger cubs and wolf puppies,

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144. FLA. ADMIN. CODE § 68A-6.002(b).

145. *Id.* at § 68A-6.003; 68A-6.010-011.

146. *Id.* at § 68A-6.002(d) ("Hybrids resulting from the cross between wildlife and domestic animal, which are substantially similar in size, characteristics and behavior so as to be indistinguishable from the wild animal shall be regulated as wildlife at the higher and more restricted class of the wild parent.").

147. *See* OFF. CODE OF GA. ANN. § 27-5-1; § 27-5-5 (2023).

148. *See* ALA. ADMIN. CODE r. § 220-2-.26 (2023).

149. *See* Bloch, *supra* note 140.

150. *See, e.g.*, *id.*; Animal Legal Def. Fund v. Fur-Ever Wild, No. 17-cv-4496, 2018 U.S. Dist. LEXIS 191348 (D. Minn. Nov. 8, 2018).

151. *See* 16 U.S.C. § 3372(e).

do not benefit from being characterized as charismatic megafauna (i.e., they are not generally considered "cute and cuddly").

The American alligator ("alligator") is a keystone carnivorous species found throughout Florida and various ecosystems of the Southeastern United States.[152] While noticeable differences exist between big cats and alligators, the latter's size, strength, and predatory instincts are analogous to the former's, necessitating enhanced regulatory oversight.[153] For instance, mature alligators weigh up to a thousand pounds, range from six to fourteen feet in length, are fast over short distances, and have powerful jaws and tails.[154]

As an abundant cold-blooded species, captive alligators are exempt from federal protections granted by the AWA and ESA.[155]

Thus, regulation of alligator conservation, private pet ownership, and commercial exhibition varies by state and municipality.[156] Consistent with exotic species previously discussed, online sales, auctions, and popularity on social media contribute to a growing phenomenon of alligator pet ownership.[157] As a result, in recent years, wildlife officials across the nation have observed a rise in alligator abandonment in parks and public places.[158]

In 1987, the Florida legislature designated the American alligator as the official state reptile.[159] FWC regulates live alligators as a Class II wildlife species and provides regulations governing personal possession and public exhibition.[160] Florida's prevalent wildlife tourism attractions include "alligator wrestling" and baby alligator photo-ops.[161] While the exact origins of alligator wrestling are widely debated, some argue the modern attraction extends from the capturing techniques used by southeastern Native Americans,

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152. *American Alligator*, FLA. FISH & WILDLIFE COMM'N, https://myfwc.com/wildlife habitats/profiles/reptiles/alligator/ (last visited Nov. 13, 2023).

153. *See id.*

154. *Id.*

155. *See* 7 U.S.C. § 2132(g); *Listed Animals*, *supra* note 91; *Reclassification of American Alligator to Thr. Due to Similarity of Appearance Throughout Remainder of its Range*, 52 Fed. Reg. 21059-21064 (Jun. 4, 1987). While the conservation status of the American alligator is of least concern, it is technically listed as threatened under the ESA because of its similar appearance to the endangered American crocodile. *Id.* However, these protections are largely weak and unenforced in the context of an alligator bred or possessed in captivity.

156. *See* 7 U.S.C. § 2132(g); *Listed Animals*, *supra* note 91.

157. Tina Deines, *Alligators Make Terrible Pets*, NAT'L GEOGRAPHIC (Jul. 31, 2020), https://www.nationalgeographic.com/animals/article/pet-alligators#:~:text=Official% 20numbers%20on%20how%20many,city%20of%20Chicago%20each%20year.

158. *Id.*

159. FLA. STAT. ANN. § 15.0385 (LexisNexis 2023).

160. *Id.* §§ 379.3761-379.3762; FLA. ADMIN. CODE ANN. 68A-6.002-6.003 (2024).

161. Casey Riordan et al., *Investigating the Welfare and Conservation Implications of Alligator Wrestling for American Alligators (Alligator Mississippiensis)*, 15 PLOS ONE 11, 3 (2020).

such as the Seminole tribe.[162] Today, alligator wrestling is performed by non-native wrestlers across the country and has received increased attention following the Animal Planet series "Gator Boys," which documented a team of non-native alligator trappers and wrestlers.[163] Wrestlers often claim that alligator wrestling promotes environmental and species conservation, as the Tiger King claimed with respect to his tigers.[164]

Contrary to popular belief, reptiles are capable of experiencing a range of emotions, such as anxiety, fear, distress, frustration, and suffering.[165] Research suggests that alligator wrestling causes them substantial and routine stress, provides little to no environmental conservation benefits, and creates an extreme risk to the health and safety of the viewing public.[166] Alligator wrestling involves physically restraining an alligator's legs and torso, poking or slapping the animal's jaws, dragging the animal by the mouth, tail, and limbs, flipping the alligator onto its back, and poking the eyes to elicit a reaction.[167] Wrestling shows often conclude with profitable photo opportunities, whereby a young alligator's jaws are taped closed before excessive forced handling by members of the public, many of which are children.[168] Thus, like the animal welfare and public safety concerns giving rise to enhanced captive big cat regulation, privately owned and commercially exhibited alligators could benefit from comparable uniform federal protection.[169]

VI. CONCLUSION

The passing of the BCPSA is an incredible accomplishment for those animal advocates striving to strengthen the U.S.'s relatively weak animal welfare laws. Moving forward, the BCPSA's three-pillar framework should be applied to similarly situated animals, such as the gray wolf and American alligator. Policymakers, lawmakers, regulators, and other stakeholders such as accredited zoological professionals, licensed veterinarians, filmmakers, and members of the voting public should continue to support the

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162. *Id.* at 5-6.

163. *Id.* at 3; *Gator Boys*, ANIMAL PLANET, https://www.animalplanet.com/show/gator-boys-animal-planet (last visited Feb. 9, 2024); *see also* SCALES TAILS AND TEETH TRAVELING ROADSHOWS, https://scalestailsandteeth.com/roadshow/ (last visited Apr. 9, 2024).

164. *See* Riordan, *supra* note 161, at 3 (Florida's AZA-accredited St. Augustine Alligator Farm also claims to support environmental conservation without offering alligator wrestling, putting into question whether wrestling is necessary to achieve conservation).

165. *Id.*; Helen Lambert et al., *Given the Cold Shoulder: A Review of the Scientific Literature for Evidence of Reptile Sentience*, 9 ANIMALS 821, at *2-*4.

166. *See* Riordan, *supra* note 161, at 14-15.

167. *Id.* at 6.

168. *See id.* at 15.

169. *See* 16 U.S.C. § 3372(e).

promulgation of uniform federal laws seeking to restrict inhumane private pet ownership and exploitative commercial exhibition of exotic animals.