

November 18, 2019

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**Via electronic submission:** [wildliferegs@dec.ny.gov](mailto:wildliferegs@dec.ny.gov);  
[SpecialLicenses@dec.ny.gov](mailto:SpecialLicenses@dec.ny.gov)

Re: Comments on Animals Considered Dangerous to Health or  
Welfare Rulemaking

Dear Mr. Therrien,

On behalf of PETA and its more than 6.5 million members and supporters worldwide, including over 300,000 in New York state, I hereby submit the following comments on the New York State Department of Environmental Conservation (NYSDEC) proposed rulemaking to amend 6 NYCRR Section 180.1.

Dangerous wild animals pose inherent public safety risks and should only be kept by institutions with sufficient expertise, staff, resources, and facilities to provide the highest standards of welfare and safety. Not only should the NYSDEC prohibit private possession of dangerous wild animals, but the agency should also more stringently regulate commercial exhibition. Accordingly, PETA supports the broad prohibition on the possession of dangerous wild animals outlined in Alternative 2. However, PETA would recommend exempting facilities accredited or verified by the Association of Zoos and Aquariums or the Global Federation of Animal Sanctuaries from that prohibition.

Additionally, PETA recommends that the NYSDEC incorporate a strict prohibition on direct contact with all dangerous wild animals into the proposed regulation.

PETA fully supports classifying the identified species as dangerous wild animals, but recommends that the agency consider including camels, otters, kangaroos, and wallabies to 6 NYCRR Section 180.1, due to these species inherent danger to the public.

Thank you for your consideration of PETA's comments.

Very truly yours,



Michelle Sinnott  
Counsel, Captive Animal Law Enforcement

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## PETA's Comments on Animals Considered Dangerous (6 NYCRR Section 180.1)

### Introduction

In Section 11-0511 of New York's Environmental Conservation Law, the Legislature authorizes the New York State Department of Environmental Conservation (NYSDEC) to determine what species of "native or non-native live wildlife or fish" are dangerous to the "health or welfare of the people of the state."<sup>1</sup> Pursuant to this statutory authority, NYSDEC has determined that "all subspecies of the lion (*Panthera leo*), the raccoon dog (*Nyctereutes procyonides*), and any animal, the overall appearance of which makes it difficult or impossible to distinguish it from a wolf (*Canis lupus*) or a coyote (*Canis latrans*)" are dangerous.<sup>2</sup> As NYSDEC has recognized, this list is not comprehensive and excludes particularly dangerous wild animals, such as elephants, primates, bears, reptiles, and many species of wild felids and wild canids. Incidents involving these particularly dangerous wild animals are well documented.

Countless people across the country have been injured or even killed by wild animals that are not currently listed in 6 NYCRR Section 180.1 as dangerous:

- Nondomestic felids have killed at least 25 people and injured more than 280 in the United States alone since 1990.<sup>3</sup>
- Captive bears have killed at least 6 people and injured more than 60 in the United States alone since 1990.<sup>4</sup>
- Great apes and other large primates have injured over 280 humans in the United States alone since 1990.<sup>5</sup>
- Since 1987, captive elephants have killed at least 20 people and injured more than 140 in North America alone.<sup>6</sup>

In just New York, there are numerous examples of people being injured or killed by wild animals not currently included in 6 NYCRR Section 180.1 as dangerous:

- In January 2017, a woman in Buffalo was bitten by her 2-foot-long ball python, whose teeth and body were still wrapped around her hand when police arrived.<sup>7</sup>
- In September 2016, a man in West Babylon had to be airlifted to a hospital after being bitten by his Egyptian saw-scaled viper.<sup>8</sup>

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<sup>1</sup> N.Y. Env'tl. Conserv. Law § 11-0511.

<sup>2</sup> 6 NYCRR § 180.1(b).

<sup>3</sup>Ex. 1, PETA, *Big-Cat Incidents in the United States*, available at <https://www.peta.org/wp-content/uploads/2021/06/BigCatIncidentList.pdf>.

<sup>4</sup>Ex. 2, PETA, *Bear Incidents in the United States*, available at <https://www.peta.org/wp-content/uploads/2021/06/Bear-Incident-List-US-only.pdf>.

<sup>5</sup>Ex. 3, PETA, *Primate Incidents in the United States*, available at <https://www.peta.org/wp-content/uploads/2021/06/Primate-Incident-List-US-only.pdf>.

<sup>6</sup>Ex. 4, PETA, *Elephant Incidents in the United States*, available at <https://www.peta.org/wp-content/uploads/2021/06/Elephant-Incident-List-US-only.pdf>.

<sup>7</sup> Ex. 5, *Woman bit by bathtime-hating python is healing well*, The Buffalo News, Jan. 27, 2017.

<sup>8</sup> Ex. 6, *Long Island Man Says He's 'Lucky to Be Alive' After Venomous Snake Bite*, CBS New York, Sept. 6, 2016.

- In July 2016, the owner of Hidden Valley Animal Adventure—an exotic animal park in Varysburg—was trampled to death by an antelope.<sup>9</sup>
- In November 2010, a pet capuchin monkey escaped and attacked a woman in Oneida Castle while she was playing in her yard with her son.<sup>10</sup>
- In June 2008, a neighbor’s pet capuchin monkey nearly bit off a toddler’s pinkie finger in Queens.<sup>11</sup>

PETA agrees with the NYSDEC that the current regulation does not adequately protect the public from dangerous wild animals and fully supports amending the regulation.

## **I. PETA SUPPORTS ALTERNATIVE 2 WITH AN ADDED EXEMPTION FOR AZA AND GFAS ACCREDITED FACILITIES**

One alternative proposal considered by the NYSDEC—Alternative 2—was to “[p]rohibit possession of dangerous animals by any person or entity [for any purpose] in New York State.”<sup>12</sup> The main concern with this broad prohibition was that “facilities such as the Bronx Zoo which are accredited by the Association of Zoos and Aquariums (AZA)” would be prohibited from exhibiting dangerous animals.<sup>13</sup> As a result, the NYSDEC selected Alternative 3, which expands the list of dangerous animals and allows possession of those animals for specified purposes—purposes that any facility exhibiting wild animals would easily meet.

There are only 10 AZA accredited facilities in New York State that possess the dangerous wild animals proposed for listing: (1) Bronx Zoo, (2) Buffalo Zoo, (3) Central Park Zoo, (4) Prospect Park Zoo, (5) Queens Zoo, (6) Rosamond Gifford Zoo at Burnet Park, (7) Seneca Park Zoo, (8) Staten Island Zoo, (9) Trevor Zoo, and (10) Utica Zoo.<sup>14</sup> Whereas, there are over 50 USDA licensed exhibitors within the state in possession of dangerous wild animals, which does not take into account the traveling exhibitors that bring dangerous wild animals into New York from other states.<sup>15</sup> Unaccredited roadside zoos and traveling animal exhibitors are precisely the type of facilities most likely to house, transport, or exhibit dangerous animals in conditions that pose a risk to the public.<sup>16</sup> The NYSDEC’s narrow concern was about ensuring that the 10 AZA

<sup>9</sup> Ex. 7, *Upstate New York animal park owner trampled to death while feeding antelope*, Fox 61, July 19, 2016.

<sup>10</sup> Ex. 8, *Pet monkey euthanized after biting NY woman*, Associated Press, Nov. 12, 2010.

<sup>11</sup> Ex. 9, *Monkey nip nearly takes off tot’s finger*, Daily News, June 6, 2008.

<sup>12</sup> NYSDEC Regulatory Impact Statement, 5-6.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> See Currently Accredited Zoos and Aquariums, AZA, Sept. 2019, available here <https://www.aza.org/current-accreditation-list>. The Aquarium of Niagara and New York Aquarium are also AZA accredited, but do not appear to house any dangerous wild animals.

<sup>15</sup> Ex. 10, Excerpt of New York exhibitors and dealers, USDA List of Regulated Entities, Nov. 1, 2019, available here [https://www.aphis.usda.gov/animal\\_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf](https://www.aphis.usda.gov/animal_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf).

According to recent inventories attached to the USDA inspection reports available for licensed exhibitors in New York, approximately 50 of the unaccredited USDA regulated entities possess mammals proposed for listing as dangerous. See USDA Inspection Reports Online Database, available here <https://acis.aphis.edc.usda.gov/ords/f?p=118:203> (search for “Exhibitor” under License/Registration Type and limit state to “New York”).

<sup>16</sup> See e.g., Ex. 11, Letter from Occupational Safety and Health Administration to Bailiwick Animal Park in Catskill New York (Nov. 15, 2016) (“The employees of Bailiwick Animal Park, Inc. are exposed to the hazards of free contact with captive animals such as Syrian Brown and American Black Bears” while employees “enter bear

accredited and verified facilities in New York would be allowed to continue to possess certain species. The agency’s proposed solution, however, will sweep much more broadly, likely ensuring that *all* facilities—including those unaccredited roadside zoos that are the least qualified to possess dangerous wild animals—can continue to possess dangerous wild animals with an easily obtainable license.

The broad prohibition proposed in Alternative 2, combined with an added exemption for AZA and Global Federal of Animal Sanctuaries (GFAS)<sup>17</sup> accredited and verified facilities would address the NYSDEC’s concern while ensuring that only “qualified entities”<sup>18</sup> are possessing dangerous wild animals.

### **A. Specific Language Proposed**

In order to implement a broad prohibition on the possession of dangerous animals with an exemption for AZA and GFAS accredited facilities, PETA recommends the following:

(1) Keep the following prohibition identified in Section 180.1(b) of the current proposal:

Notwithstanding any other provision of this Chapter, and except as provided in subdivision (d) of this section, no person shall import, transport, possess, purchase, barter, transfer, sell, offer for sale, exchange, propagate or release or cause to be released within New York State any of the following live native or non-native dangerous animals including those which are captive bred in any of the following orders, families and individual species or subspecies including all subspecies and hybrids thereof. . .

(2) Remove the following provision in Section 180.1(c) that allows for licensing:

Licenses issued pursuant to this section may contain terms, conditions and standards designed to protect the public, individual residents, and indigenous wildlife populations of the State, as well as terms and requirements regarding food, shelter, care and caging to ensure humane treatment and safe captive conditions of the listed species. Such licenses may be issued only for scientific, educational, exhibition, zoological, or propagation purposes as defined in 6 NYCRR Part 175,

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enclosures to perform cleaning, feeding (at times by hand), and interacting with bears as small performances. . .”); Ex. 12, *Saratoga County Fair, and a bear-inflicted injury*, The Post Star, July 24, 2017 (describing a bear show in Saratoga County by a traveling exhibitor called ‘A Grizzly Experience’: “I looked away for a split second, but looked up when I heard ‘oohs and ahhs’ and heard the bear starting to make a weird noise. The handler was holding his face, blood streaming from it. . .as I watched the show before the injury, I thought of all the things that could go wrong when you take a 500-pound omnivore and treat it like a circus freak.”); Ex. 13, Order, In the Matter re; Jeffrey Ash (DEC Case No. OHMS 2013-68434) (upholding NYSDEC’s decision not to renew Jeffrey Ash—dba the Ashville Game Farm in Greenwich New York—license for “a number of serious incidents that occurred including, but not limited to, an individual being bitten by a bear cub, the escape of a wolf and a tiger from the game farm, a four year old boy being cut by a tiger, ownership of animals not authorized by the licenses, and a seven year old child being bitten by a lemur”).

<sup>17</sup> There are currently five GFAS accredited facilities in New York and none of them possess dangerous wild animals proposed for listing in 6 NYCRR 180.1: (1) Catskill Animal Sanctuary, (2) Equine Advocates Rescue and Sanctuary, (3) Farm Sanctuary, (4) Lucky Orphans Horse Rescue, and (5) Woodstock Farm Sanctuary. See GFAS Sanctuaries, New York, available here <https://www.sanctuaryfederation.org/find-a-sanctuary/?animal=any&region=NA&state=NY&accredited=true>.

<sup>18</sup> NYSDEC Regulatory Impact Statement, 4.

and shall be effective for one year only and shall not be transferable. Applications for, or renewal of, a license must be made on forms provided by the department. Each licensee shall make a report of his or her operations on forms provided by the department upon renewal of and prior to the expiration of the license.

- (3) Add the following to the provision in Section 180.1(d) that identifies exemptions to the broad prohibitions in Section 180.1(b):

Any facility accredited or verified by either the Association of Zoos and Aquariums or the Global Federation of Animal Sanctuaries.

These simple changes would allow AZA and GFAS accredited and verified facilities to continue to exhibit dangerous wild animals, while preventing unqualified individuals—such as unaccredited roadside zoos, circuses, and traveling animal acts—from possessing dangerous wild animals.

**B. An Exemption for AZA and GFAS Accredited Institutions Ensures Dangerous Wild Animals Are Housed at Facilities Capable of Handling Them**

The NYSDEC has previously expressed concern that “[i]ssuing permits for the possession of wild animals. . . is outside the mission of the Department” and that the agency “lacks the expertise to promulgate standards of care” for wild animals held in captivity.<sup>19</sup> Those concerns are on full display with the NYSDEC’s proposed rule. Despite wanting a rule that “would provide the department with the necessary means to allow qualified entities to possess such animals,”<sup>20</sup> the proposed regulation does not provide any substantive requirements that the agency could use to assess whether an exhibitor is qualified to care for, handle, and possess dangerous wild animals. The proposed regulation is simply administrative, designed for the NYSDEC to issue licenses for any facility exhibiting dangerous animals that fills out the proper paperwork.

Accreditation or certification by the AZA or the GFAS, means that a recognized and respected accrediting body has certified that a facility possesses the requisite expertise and meets the highest professional standards. Accreditation and certification for both organizations involves a comprehensive review process to verify that a facility meets professionally designed animal care and public safety standards, and fulfills the overarching philosophies of the accrediting body, among other things.

Accreditation provides the NYSDEC with a professional standard of care benchmark that is administratively easy to verify. Indeed, New York has already recognized the value of relying on such accreditation.<sup>21</sup> For example, the New York Department of Agriculture prohibited the

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<sup>19</sup> New York Bill Jacket, 2004 S.B. 7616, Ch. 692.

<sup>20</sup> NYSDEC Regulatory Impact Statement, 4.

<sup>21</sup> See N.Y. Comp. Codes R. & Regs. tit. 1, § 68.3(b) (“All movements of [chronic wasting disease] susceptible cervids into New York State are prohibited until August 1, 2023, except movements to a zoo accredited by the Association of Zoos and Aquariums”); N.Y. Agric. & Mkts. Law § 380 (3) (prohibiting the use of elephants in entertainment acts except “[t]he provisions of this section shall not apply to (a) institutions accredited by the Association of Zoos and Aquariums; and (b) wildlife sanctuaries as defined in subdivision thirty-two of section 11-0103 of the environmental conservation law”).

movement of cervids susceptible to chronic wasting disease—“a progressive, uniformly fatal, degenerative neurological disease of captive and free-ranging susceptible cervid species”<sup>22</sup>—into New York in an effort to control the disease.<sup>23</sup> The *only* exemption to this across the board prohibition was for “movements to a zoo accredited by the Association of Zoos and Aquariums.”<sup>24</sup> In explaining its reasoning for this narrow exemption, the Department of Agriculture explained:

AZA (Association of Zoos and Aquariums) zoos are an entirely different level of risk than the average captive deer business. AZA zoos have smaller collections of CWD susceptible species, the animals are monitored throughout the day, escapes are extremely rare, there is a perimeter fence in addition to the animals’ primary enclosure, the amount of primary enclosure fence that must be maintained is much less, there is careful veterinary oversight, there are post mortem exams on nearly all mortalities, and CWD sampling opportunities are very seldom missed.<sup>25</sup>

The New York Legislature also used AZA accreditation as a basis to exempt facilities from the complete prohibition on using “elephants in any type of entertainment act.”<sup>26</sup> Other states have also used AZA accreditation as a basis to exempt facilities from prohibitions or ensure that only qualified facilities obtain certain licenses:

- Colorado only allows AZA accredited or certified facilities to “possess animals from the families *Canidae*, *Felidae* and *Ursidae*.”<sup>27</sup>
- Washington state prohibits the importation and possession of certain deleterious exotic wildlife, but allows licenses for “display by zoos or aquariums who are accredited institutional members of the association of zoos and aquariums (AZA).”<sup>28</sup>
- Oklahoma prohibits the importation and possession of exotic swine, however exceptions may be granted only for zoos accredited by the AZA.<sup>29</sup>

The AZA and the GFAS provide the highest professional standards for animals, as well as public health and safety. Using accreditation as a basis to identify facilities that are qualified to possess,

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<sup>22</sup> 2018 NY REG TEXT 501499 (NS) (Dec. 26, 2018).

<sup>23</sup> *Id.* (“Presently, the State’s cervid population is believed to be to be free of [chronic wasting disease] CWD. However, CWD has been detected in both captive and free-ranging cervids in other states and, if an infected cervid were to be imported into New York, that cervid could, in turn, infect other cervids. The proposed rule, by extending the prohibition upon the importation of CWD-susceptible cervids, will not provide a guarantee but will significantly lessen the possibility that the State’s cervid population will contract CWD; indeed, since the prohibition was initially promulgated (i.e., August 1, 2013), no CWD-infected cervid has been found in the State.”); *see also* N.Y. Comp. Codes R. & Regs. tit. 1, § 68.3(b) (regulatory prohibition)

<sup>24</sup> N.Y. Comp. Codes R. & Regs. tit. 1, § 68.3(b).

<sup>25</sup> 2014 NY REG TEXT 341344 (NS) (April 16, 2014).

<sup>26</sup> N.Y. Agric. & Mkts. Law § 380(3).

<sup>27</sup> 2 Colo. Code Regs. § 406-11:1102.

<sup>28</sup> Wash. Admin. Code 220-640-200(3).

<sup>29</sup> Okla. Stat. Ann. tit. 2, § 6-6.

handle, and house dangerous wild animals is reasonable and consistent with how New York—and other states—have structured wild animal prohibitions.

### 1. AZA

The AZA’s accreditation and certification standards are rigorous.<sup>30</sup> Fewer than ten percent of exhibitors in the United States meet the AZA’s rigorous standards for accreditation or certification.<sup>31</sup> In order to secure AZA accreditation, applicants must possess “extraordinary vision and leadership, and a comprehensive team effort to attain excellence in all areas of operations and management.”<sup>32</sup> The accreditation process involves a lengthy “institutional stakeholders study” and peer-evaluation undertaken by other AZA-accredited facilities that examines the entirety of the applicant’s operation, including: their animal care, welfare, and well-being, veterinary care, conservation and scientific advancement, governance, finance, staff, safety and security, physical facilities, and institutional partnerships.<sup>33</sup>

The distinguishing characteristics of AZA-accredited institutions include:

- Extraordinary focus on animal care, welfare, and well-being
- Modern facilities and practices for comprehensive veterinary care
- Scientific advancement in animal care and conservation
- Focus and participation to support sustainable animal populations
- Exhibit aesthetics and habitat studies, planning, and design
- Economic development and community partnerships
- Dynamic and mission-driven strategic and master planning
- Professional staff development and training<sup>34</sup>

### 2. GFAS

The GFAS is a non-profit organization founded by nationally and globally recognized leaders in the animal welfare field. The GFAS provides accreditation and certification for animal sanctuaries, rescue centers, and rehabilitation centers through its programs of accreditation and verification.<sup>35</sup> GFAS accredits and verifies organizations based on substantial compliance with

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<sup>30</sup> Ex. 14, Association of Zoos & Aquariums, *Accreditation Basics*, AZA.ORG (“The Accreditation Commission evaluates every zoo . . . to make sure it meets AZA’s standards for animal management and care, including living environments, social groupings, health, and nutrition.....The Accreditation Commission also evaluates the veterinary program, involvement in conservation and research, education programs, safety policies and procedures, security, physical facilities, guest services, and the quality of the institution’s staff ..... [A]ccreditation also evaluates each institution’s finances, its governing authority, and its support organization.”).

<sup>31</sup> Ex. 15, Association of Zoos & Aquariums, *FAQs*, AZA.ORG (noting that “[o]f the approximately 2,800 animal exhibitors licensed by the USDA across the country, less than 10% are AZA accredited”).

<sup>32</sup> Ex. 16, Association of Zoos & Aquariums, *The Accreditation Standards & Related Policies* 8 (2019 ed.), available at <https://www.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 9. The AZA certification process is just as rigorous as the accreditation process. *See id.* at 3 (noting that for certification, “an education program is not required, nor are [the accreditation] standards directly related to the presence of the visiting public”); *see also id.* at 4 (noting that AZA certification is “[a] process similar to accreditation” and involves “review and assessment of facilities that operate in support of zoos and aquariums, but are typically not open to the public on a regular basis”).

<sup>35</sup> Ex. 17, Global Federation of Animal Sanctuaries, *Accreditation FAQ*.

the GFAS Standards of Excellence. These standards are species specific, and each set of standards outlines requirements for, among other criteria:

- Housing
- Physical facilities and administration
- Nutritional requirements
- Veterinary care
- Well-being and handling
- General staffing
- Safety policies, protocols, and training
- Financial records and stability
- Public contact and restriction on use and handling<sup>36</sup>

**C. A Broad Prohibition is Consistent with Legislative Intent and Would Address the Problem of Roadside Zoos like the Ashville Game Farm**

In 2004, the New York Legislature—recognizing the dangers associated with unqualified people possessing captive wild animals—prohibited the possession of exotic animals as pets finding that “these animals and other wild animals are inherently dangerous and unsuited to domesticated life, [a]s evidenced by the burgeoning number of privately owned wild animal attacks on humans.”<sup>37</sup> The Legislature noted that “[a]cross the country, children have been mauled by large cats, asphyxiated by snakes, and bitten by monkeys” and the “[r]ecapture of escaped wild animals is an expensive and dangerous endeavor for municipalities.”<sup>38</sup> Further, the Legislature found that “[f]orcing wild animals to live in unnatural confinement among humans is both cruel and contrary to the interest of public health and security.”<sup>39</sup> Despite these findings, the Legislature included a grandfather provision in the new law that allowed “[p]ersons in possession of wild animals as pets at the time” the law took effect to “retain possession of those animals.”<sup>40</sup>

The NYSDEC agreed with the Legislature that “keeping exotic animals as pets pose[d] a serious threat to the health and public safety of New York State residents.”<sup>41</sup> However, the agency recommended disapproval of the bill because it fell short of accomplishing its goal of ensuring protection of the public “by allowing those that already posse[d] wild animals to continue to possess such animals under a permit system.”<sup>42</sup> The NYSDEC argued that a “complete prohibition on the sale and possession of these animals would be a more appropriate response to [the] threat.”<sup>43</sup> From the NYSDEC’s perspective, “it is difficult to understand how the stated object of the bill, which is to protect people from being injured, will be accomplished by ensuring that these animals will be around for many years to come.”<sup>44</sup> The NYSDEC felt

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<sup>36</sup> Ex. 18, Global Federation of Animal Sanctuaries, Standards of Excellence.

<sup>37</sup> New York Bill Jacket, 2004 S.B. 7616, Ch. 692.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



strongly that “permitting [could not] make these animals safe to the public or ensure the humane treatment of these animals which by their nature cannot appropriately be kept as pets.”<sup>45</sup>

Almost 15 years after New York enacted the ban on ownership of exotic animals as pets, the NYSDEC’s concerns that a permitting system would not protect the public from dangerous wild animals has proven to be true:

The ban on ownership of exotic animals as pets in New York State has not prevented the threat that these animals pose to the public or indigenous fish or wildlife as evidenced by the escape of and, injury from dangerous animals *held at facilities licensed by the department under the current regulatory scheme to possess such animals for exhibition.*<sup>46</sup>

The NYSDEC’s regulatory impact statement identified five incidents in New York where wild animals in captivity have caused serious injury to humans. Two of those incidents—Suffolk County and Putnam Lake—were attacks from unpermitted “pet” snakes the private possession of which is already prohibited by state law.<sup>47</sup> One incident—Catskill—was an attack by a grandfathered “pet” capuchin monkey that would be prohibited by the proposed regulation. The other two New York incidents occurred at an unaccredited roadside zoo.

- Washington County, 2010: A seven-year-old boy was bitten by a lemur at the Ashville Game Farm.<sup>48</sup> An NYSDEC investigation into this incident led to the owner of the facility being arrested on a 29-count indictment.<sup>49</sup>
- Saratoga, 2006: A four-year-old boy was clawed in the head by a white Bengal tiger on display at the Saratoga County Fair. The tiger was owned and exhibited by the Ashville Game Farm.<sup>50</sup>

There is nothing in the NYSDEC’s proposed regulation that would have prevented the Ashville Game Farm from obtaining the necessary permits to exhibit the dangerous wild animals involved in the above incidents. Because the Ashville Game Farm is unaccredited, a complete ban with an exemption for AZA and GFAS accredited facilities *would* have prevented this facility from possessing dangerous wild animals.

Unaccredited facilities and traveling animal acts pose grave risks to the public. According to a database of exotic animal incidents maintained by Born Free USA, out of the five recorded incidents in New York that resulted in a human death, one occurred at an unaccredited facility, one occurred at a circus, and three were caused by exotic animals kept as “pets.”<sup>51</sup> The same database identifies 36 exotic animal incidents in New York that resulted in human injury, and the

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<sup>45</sup> *Id.*

<sup>46</sup> NYSDEC Regulatory Impact Statement, 3 (emphasis added).

<sup>47</sup> N.Y. Envtl. Conserv. Law § 11-0512 (1)(a) (“It shall be prohibited for any person to knowingly possess, harbor, sell, barter, transfer, exchange or import any wild animal for use as a pet in New York state . . .”).

<sup>48</sup> Ex. 19, *Officials Seek Court Order to Kill Lemurs*, The Wall Street Journal, Aug. 13, 2010.

<sup>49</sup> Ex. 20, *Ashville Game Farm owner indicated, arrested*, The Post Star, Dec. 17, 2010.

<sup>50</sup> Ex. 21, *Owner of tiger that clawed NY boy faces forgery charge*, The Post Star, Jan. 28, 2007.

<sup>51</sup> Ex 22, Born Free USA Exotic Incident Database, New York Deaths, *also available here*, [https://www.bornfreeusa.org/?post\\_type=exotic\\_incidents&state=NY&category=HD&s](https://www.bornfreeusa.org/?post_type=exotic_incidents&state=NY&category=HD&s).

majority of those incidents were either caused by “pets” or occurred at unaccredited facilities.<sup>52</sup> Unaccredited roadside zoos and traveling shows are a primary cause of the public safety dangers that NYSDEC is trying to address. As the NYSDEC has aptly noted before, “permitting cannot make these animals safe to the public” and a “complete prohibition” is a more appropriate response to the threat.<sup>53</sup>

## **II. THE REGULATION SHOULD INCLUDE A STRICT PROHIBITION ON DIRECT CONTACT WITH DANGEROUS WILD ANIMALS**

Wild animals are subjected to unnecessary stress when they are used for public contact. Exhibitors often mislead members of the public into believing that touching a wild animal will somehow help ‘save’ or preserve the species because it inspires a human-animal bond, which is scientifically untrue,<sup>54</sup> fails to consider the welfare of the animals, and ignores the risks for the people involved in public contact. The public is often duped into thinking that holding a baby wild animal is acceptable, without realizing that the animal was taken from his or her mother, and will likely suffer during training to be used for just a few short weeks for photo opportunities. Parents and children ride elephants or camels without realizing the inhumane handling practices that exhibitors use in order for these animals to be used in public contact. These various settings pose inherent risks of physical injury, zoonotic disease transmission, and long-term social, behavioral, and psychological issues to animals. Thus, permitting public contact with *any* wild animal is inherently dangerous, but in order to safeguard human safety, direct contact with dangerous wild animals should be prohibited.

### **A. The Problems with Direct Contact**

Permitting direct contact with any wild animal is inherently dangerous for both animals and humans, as demonstrated by the examples provided throughout these comments. Exhibitors who encourage and facilitate public contact with wild animals routinely use cruel training methods (which go unmonitored), and expose animals to conditions that are detrimental to their physical and psychological well-being. Humans have been attacked, injured, and even killed by wild animals who were subjected to public contact.

Captivity does not take away a wild animal’s potential to inflict harm on human beings. This is because wild animals have evolved certain instincts and remain genetically and behaviorally identical to their wild counterparts (unlike domesticated species). Captivity does not change what these animals are hard-wired to do, and it cannot domesticate a wild animal.<sup>55</sup> Discussing the

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<sup>52</sup> Ex. 23, Born Free USA Exotic Incident Database, New York Injuries, *also available here*, [https://www.bornfreeusa.org/?post\\_type=exotic\\_incidents&state=NY&category=HI&is](https://www.bornfreeusa.org/?post_type=exotic_incidents&state=NY&category=HI&is) (10 occurred at unaccredited facilities and circuses, and 22 were caused by “pets”).

<sup>53</sup> New York Bill Jacket, 2004 S.B. 7616, Ch. 692.

<sup>54</sup> Ex. 24, Ross S.R., et al. (2011). Specific Image Characteristics Influence Attitudes About Chimpanzee Conservation and Use as Pets. *PLoS ONE* 6(7).

<sup>55</sup> Ex. 25, Diamond, J. (2002). Evolution, consequences and future of plant and animal domestication. *Nature*, 418, 700–707 (explaining that even though “domestication of wolves began around 100,000 years ago. . . morphological differences between wolves and dogs (which should be easily detectable in fossilized skeletons) do not appear until about 11,000 years ago”); Ex. 26, *Domestic animals, explained*, National Geographic, July 4, 2019 (explaining that domesticated animals are “genetically distinct from their wild ancestors or cousins” and it is “a generations-long journey from wild animal to domesticated pet or livestock”).

captivity of big cats and other animals, Marc Bekoff, a former Professor of Ecology and Evolutionary Biology at the University of Colorado, Boulder, a Fellow of the Animal Behavior Society, and a past Guggenheim Fellow, cautioned:

In my courses that I teach in animal behavior I always tell people when you've got these hard-wired behavior patterns, like predatory behavior, or hunting, or maternal behavior, or anti-predatory behavior — it doesn't take much to trip them. And I myself, who supposedly knows a lot about carnivores, was almost killed by a mountain lion and almost killed by a wolf because I did something unbeknownst to me that triggered something really hard-wired in their brain. The animal does what the animal does.<sup>56</sup>

1. *Risk of disease transmission between animals and humans*

Several zoonotic diseases, including tuberculosis, herpes, rabies, smallpox, leptospirosis, salmonellosis, E. coli, and dermatomycosis, can be transmitted between animals and members of the public who come in contact with exhibited animals. For example, elephants and primates are both known carriers of deadly and highly transmissible tuberculosis.<sup>57</sup> Animals used for petting zoos frequently contract parasitic diseases, which can be transmitted to humans during public handling and feeding and have resulted in major disease outbreaks and death.<sup>58</sup>

Wild animals such as big cats who are used for public handling as cubs are at risk of contracting disease because infant animals have weakened immune systems when they are taken from their mothers to be used for public interactions.<sup>59</sup> Exposing infant animals to unnecessary handling can lead to the transmission of contagious diseases that the cubs are ill-equipped to fend off.

2. *Abusive training techniques are common for animals used for public interactions*

Regardless of the size or strength of a wild animal, unaccredited exhibitors routinely use physical abuse to control animals during or when training for public interactions. For larger wild animals, abusive tools designed to inflict pain and instill fear, such as whips, bullhooks, and electric prods or hotshots, are used. Small or young wild animals may also be struck with whips, or are simply physically overpowered by handlers. These types of physically abusive training methods do *not* make wild animals safe to handle and do not remove the possibility of aggressive and unpredictable behavior.

Unaccredited exhibitors who use wild animals for public interactions routinely use abusive training tactics, for example:

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<sup>56</sup>Ex. 27, *They're Natural Born Killers: Wild Animals in Captivity Inherently Dangerous*, ABC News, Dec. 28, 2007.

<sup>57</sup>Ex. 28, Montali, R.J., et al. (2001). *Mycobacterium tuberculosis* in zoo and wildlife species. *Rev Sci Tech*, 20(1), 291–303.

<sup>58</sup>Ex. 29, PETA, *Health Hazards of Petting Zoos*, also available at <https://www.peta.org/wp-content/uploads/2021/02/petting-zoo-factsheet.pdf>.

<sup>59</sup>Ex. 30, USDA's Tech Note, *Handling and Husbandry of Neonatal Nondomestic Cats* (2016) (prohibits exhibitors from exposing neonatal cubs to public handling because of their inability to thermoregulate and because they “lack a fully functioning immune system to fight off disease and infection”).

- Sidney Yost, the owner of Amazing Animal Actors in California has been repeatedly documented using physical abuse to train animals for public exhibition, including the use of a stick to control a capuchin monkey, a lion, and tigers.<sup>60</sup>
- Michael Hackenberger—the owner of the Bowmanville Zoo in Ontario Canada—used animals for movie and TV productions, public zoo exhibitions, circuses, and public interactions. He was filmed repeatedly whipping a tiger and discussed the different techniques the facility uses to train animals, including hitting the animals with sticks.<sup>61</sup>

Exhibitors have also been caught depriving animals used for public contact of food and/or water:

- During a 2014 investigation of the Natural Bridge Zoo in Virginia, the Humane Society of the United States learned that cubs used for photo shoots were deprived of food so that they would be hungry for visitors to bottle feed them while posing for photos.<sup>62</sup>
- A whistleblower reported that if animals did not perform perfectly, circus exhibitor Zachary Garden regularly directed employees to “withhold food and water from the baby camels and the zebra, which would be provided only after the next performance was completed without incident. This could be as long as 24 hours.”<sup>63</sup>
- Whistleblowers reported that the Barry R. Kirshner Wildlife Foundation—a roadside zoo in California—regularly deprived animals of food for two days each week. According to the whistleblowers, even animals who were underweight—including a tiger whose hip bones were visibly protruding—were fasted twice a week. Kirshner apparently used food deprivation as a tool to make the animals work for food.<sup>64</sup>

### 3. *Direct contact with wild animals is dangerous for employees and the public*

The Occupational Safety and Health Administration (OSHA) has repeatedly found that allowing employees to engage in direct contact with big cats, bears, elephants, and primates violates the general duty clause of the Occupational Safety and Health Act. If the governing agency protecting *employees* has determined that direct contact is not safe for employees, it certainly is not safe for the public either. Examples of citations and warnings include:

- November 15, 2016: The Bailiwick Animal Park in Catskill New York was warned to take steps to protect its employees after employees were allowed to enter the Syrian

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<sup>60</sup>Ex. 31, USDA Complaint In re: Sidney Jay Yost, AWA Dckt No. 12-0294 (March 12, 2012); Ex. 32, Testimony of Sarah Baeckler (Oct. 14, 2003).

<sup>61</sup>Ex. 33, [New PETA video allegedly shows Bowmanville Zoo owner explaining tactics](#), CityNews Toronto, Jan. 7, 2016 (Hackenberger was caught saying, “At the end of the day, it’s only through disincentives that you can absolutely force an animal into something”)

<sup>62</sup>Ex. 34, HSUS, *The HSUS Investigates: Natural Bridge Zoo in Natural Bridge, Virginia* (Jan. 2015).

<sup>63</sup>Ex. 35, Affidavit of Piccadilly Circus whistleblower (operated under Zachary Garden, from 2012-2013).

<sup>64</sup>Ex. 36, USDA Complaint No. W13-188, Jul. 31, 2013 (detailing a whistleblower report from a volunteer who worked at Kirshner from 2011-2012).

brown and American black bear enclosures “to performing cleaning, feeding (at times by hand), and interacting with bears a[t] small performances.”<sup>65</sup>

- January 27, 2016: The Mobile Zoo in Alabama was assessed a penalty of \$2,000 for failing to protect employees from serious injury by allowing a chimpanzee to hold an employee’s arm and reach her face through the cage.<sup>66</sup>
- May 19, 2014: Yellow River Game Ranch in Georgia was assessed a penalty of \$2,800 for allowing its employees to have direct contact and enter cages with black bears, bobcats, and a mountain lion.<sup>67</sup>
- March 31, 2014: The Garold Wayne Interactive Zoological Foundation in Oklahoma, operated by licensee Joe Maldonado (Schriebvogel) was assessed a penalty of \$2,800 for failing to protect employees from the “recognized hazards” of possible death or serious injury from direct contact with tigers, lions, ligers, and bears after an employee nearly had her arm ripped off by a tiger.<sup>68</sup> The citation was issued after a tiger severely mauled the arm of an employee who reached into the enclosure confining the animals. The woman lost most of the arm.
- January 8, 2014: Cherokee Bear Zoo in North Carolina was assessed a penalty of \$2,000 for allowing its employees to have regular unprotected contact and entering enclosures with black and Syrian brown bears.<sup>69</sup>
- April 29, 2013: After a bear mauled an employee to death at Animals of Montana in Montana, the exhibitor was assessed a penalty of \$7,000.<sup>70</sup> The keeper sustained several injuries during the mauling and died from bite and claw wounds to the keeper’s major arteries.
- July 14, 2009: Following an incident in which a volunteer was hospitalized after a tiger grabbed him by the arm, pulled him against the cage, and bit him at Big Cats of Serenity Springs in Colorado, the exhibitor was assessed a penalty of \$7,000 for repeatedly exposing employees to risk of death or serious harm from direct contact with non-domestic felines.<sup>71</sup>

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<sup>65</sup> Ex. 11, Letter from Occupational Safety and Health Administration to Bailiwick Animal Park in Catskill New York (Nov. 15, 2016)

<sup>66</sup>Ex. 37, OSHA Citation and Notification of Penalty No. 1104985, The Mobile Zoo, Jan. 27, 2016.

<sup>67</sup>Ex. 38, OSHA Citation and Notification of Penalty No. 953969, Stone Mountain Game Ranch, May 19, 2014.

<sup>68</sup>Ex. 39, OSHA Citation and Notification of Penalty No. 952924, G.W. Interactive Zoological Foundation, Mar. 31, 2014.

<sup>69</sup>Ex. 40, OSHA Citation and Notification of Penalty No. 943926, Cherokee Bear Zoo, Dec. 30, 2013.

<sup>70</sup>Ex. 41, OSHA Citation and Notification of Penalty No. 724901, Animals of Montana, Apr. 29, 2013.

<sup>71</sup>Ex. 42, OSHA Citation and Notification of Penalty No. 312140445, Serenity Springs Wildlife Center, Jul. 14, 2009.

Incidents like these are one of the many reasons that the GFAS has restrictive standards, broken down by species, relating to public contact, including the following:<sup>72</sup>

- Felids, feliforms, canids, caniforms, and bears: “Direct physical interaction is limited to protected forms of contact, by experienced personnel, to minimize the risk of injury” and “No direct contact between the public and [felids, feliforms, canids, caniforms, and bears] occurs.”
- Primates: “No direct contact between the public and primates occurs.”
  - Specifically for great apes, “Direct physical interaction is limited to protected forms of contact, by experienced personnel, to minimize the risk of injury.”
  - Specifically for monkeys, “With few exceptions, humans do not enter enclosures with primates or engage in direct physical interaction to minimize the risk of injury.”
- Elephants: “Direct physical interaction is, with few exceptions, limited to protected forms of contact, by experienced personnel, to minimize the risk of injury,” and also “[n]o direct contact between the public and elephants occurs.”
- Ruminants: “No direct contact between the public and wild ruminants occurs.”

#### 4. *Further animal welfare considerations*

Animals used for public handling are often taken from their mothers when they are very young, which has negative implications for their physical and psychological health. Depriving social animals of the mother-infant bond, as well as the essential nutritional sustenance they require from nursing, can lead to illness or death, as well as long-term social, behavioral, and psychological consequences.

Public handling itself takes a toll on a wild animal’s physical and psychological well-being. Tiger cubs used for photo ops have fallen ill following interactions with the public,<sup>73</sup> and many exhibitors have been caught using cubs who are too young, unable to thermoregulate, and not yet immunocompetent for public contact.<sup>74</sup>

The demands of public contact deprive animals of their natural behavioral, eating, and sleeping patterns, and this disruption can lead to exhaustion or psychological distress. For captive wild animals, the simplicity of their environment, constraints on space, and isolation from conspecifics directly conflict with their natural behavior. Restrictions that clash with an animal’s

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<sup>72</sup>See GFAS, *Operation Standards and Animal Care Standards*, available by specific animal groups at <http://www.sanctuaryfederation.org/gfas/for-sanctuaries/standards/>.

<sup>73</sup>See, e.g., Ex. 43, USDA Complaint No. W11-009, Oct. 26, 2010 (reporting a cub exhibited by Beth Corley in Oklahoma who became seriously ill after, according to the handler, the animal licked hand sanitizer from a public member's hands); Ex. 44, *Inside Edition Investigates Tigers as Shopping Mall Attractions*, Inside Edition, Nov. 28, 2011, which describes a reporter posing with a cub from G.W. Exotics who was “obviously sick and barely moved,” and when asked why the cub was sick, the handler stated “I don't know. Maybe he's just tired or stressed.”)

<sup>74</sup>Ex. 45, PETA, *Tiger Cub Incidents in the United States*, also available [here](#).  
see also, Ex. 30, USDA’s Tech Note.

normal behavior can lead to stereotypic behaviors, which is a sign of poor welfare and stress.<sup>75</sup> Forcing animals to be handled by strangers for a photo opportunity or confined to a small arena where they are made to walk in circles giving rides for hours on end is in direct conflict with their instinctual behavior.

## **B. A Broad Regulatory Prohibition is Necessary to Reach Facilities and Individuals Exempted from Licensing Requirements**

In 2014, the New York Legislature enacted the so-called “Tiger Selfie” law, which prohibited direct contact between the public and big cats.<sup>76</sup> The Legislature found that “throughout the United States, several roadside zoo exhibitors and traveling menageries allow members of the public to hold[,] take photos with, and otherwise interact with wild animals” and that “[t]his activity severely harms the welfare of the animals, endangers the public, and is a heavy burden on law enforcement.”<sup>77</sup> The Legislature further noted that “[t]here is no safe or humane result when direct contact with wild animals is allowed.”<sup>78</sup>

In supporting the Tiger-Selfie law, the NYSDEC expressed concern that the provision was too narrow and “prefer[ed] that the bill prohibit contact between the public and any species listed as a wild animal in ECL § 11-0103(6)(e), which are all potentially harmful to members of the public.”<sup>79</sup> The NYSDEC acknowledged that under “existing permit or license conditions, DEC prohibits contact with regulated animals,” but the agency felt that a broad prohibition was the best way “to protect the general public from the risks associated with exposure to dangerous wild animals.”<sup>80</sup>

The proposed regulation exempts a number of entities from licensing requirements. Thus, without a specific prohibition on direct contact in the regulation, these exempt entities are not subject to license conditions that prohibit public contact. PETA recommends adding a provision

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<sup>75</sup>Ex. 46, Mason, G.J. (2010). Species differences in responses to captivity: stress, welfare, and the comparative method. *Trends in Ecology and Evolution*, 25(12), 713–721.

<sup>76</sup>N.Y. Env'tl. Conserv. Law § 11-0538 (Tiger Selfie law); N.Y. Env'tl. Conserv. Law § 11-0538(1)(a) (defining big cat as “any live species of lion (*panthera leo*), tiger (*panthera tigris*), leopard (*panthera pardus*) (with the exception of clouded leopards (*neofelis nebulosa*)), jaguar (*panthera onca*), mountain lion, sometimes called cougar (*felis concolor*) or any hybrid of such species”).

<sup>77</sup>New York Bill Jacket, 2014 S.B. 6903C, Ch. 307.

<sup>78</sup>*Id.*

<sup>79</sup>*Id.*; see also N.Y. Env'tl. Conserv. Law § 11-0103(6)(e) (defining wild animal as “any or all of the following orders and families: (1) Nonhuman primates and prosimians, (2) Felidae and all hybrids thereof, with the exception of the species *Felis catus* (domesticated and feral cats, which shall mean domesticated cats that were formerly owned and that have been abandoned and that are no longer socialized, as well as offspring of such cats) and hybrids of *Felis catus* that are registered by the American Cat Fanciers Association or the International Cat Association provided that such cats be without any wild felid parentage for a minimum of five generations, (3) Canidae (with the exception of domesticated dogs and captive bred fennec foxes (*vulpes zerda*)), (4) Ursidae, (5) All reptiles that are venomous by nature, pursuant to department regulation, and the following species and orders: Burmese Python (*Python m. bivittatus*), Reticulated Python (*Python reticulatus*), African Rock Python (*Python sabae*), Green Anaconda (*Eunectes maurinus*), Yellow Anaconda (*Eunectes notaeus*), Australian Amethystine Python (*Morelia amethystina* and *Morelia kinghorni*), Indian Python (*Python molurus*), Asiatic (water) Monitor (*Varanus salvator*), Nile Monitor (*Varanus niloticus*), White Throat Monitor (*Varanus albigularis*), Black Throat Monitor (*Varanus albigularis ionides*) and Crocodile Monitor (*Varanus salvadori*), Komodo Dragon (*Varanus komodensis*) and any hybrid thereof, (6) Crocodylia”).

<sup>80</sup>New York Bill Jacket, 2014 S.B. 6903C, Ch. 307.

that states: “It shall be unlawful for any person to knowingly allow the public to have direct contact with any wild animal identified in Section 180.1(b).” The NYSDEC should adopt the definition of direct contact used in the Tiger-Selfie law: “‘Direct contact’ means physical contact or proximity where physical contact is possible, including, but not limited to, allowing a photograph [or video] to be taken without a permanent physical barrier designed to prevent physical contact.....”<sup>81</sup>

### C. Traveling Animal Shows Cannot Effectively Prevent Direct Contact

Close encounters with dangerous wild animals, especially from behind a flimsy barrier, have the potential to create an artificial sense of safety and can encourage people to seek direct contact. Traveling exhibitors tend to get away with inadequate public barriers due to the “temporary” nature of the exhibits. The GFAS and the AZA standards require strong welded wire mesh caging for big cats, bears, and primates, and massive reinforced steel barriers for elephants—yet a rope, pop-up fence, or leash is often considered sufficient for these same species when they are on the road.

For example, CJ’s Great Cats World Park was cited by the USDA for restraining two leopards and a tiger with only a leash and chain collar during a public performance.<sup>82</sup> Aside from the fact that a determined, strong, and aggressive cat could easily escape from this restraint, a single rope barrier is more of a visual barrier than a physical one, and humans could easily cross the roped off area to have direct contact with a large cat.

Grant Kemmerer—an unaccredited traveling animal exhibitor based in Pennsylvania—frequently exhibits animals on television shows filmed in New York City. During these talk shows, the show’s host is routinely encouraged and allowed to have direct contact with the exhibited animals, most of whom are completely unrestrained.<sup>83</sup> This type of direct contact—while prohibited by NYSDEC’s permit conditions—appears to be a regular occurrence on talk shows filmed in New York:

- June 6, 2019: The hosts of Good Morning America [engage in direct contact with clouded leopard cubs and kangaroos](#)
- May 29, 2019: Wendy Williams engages in [direct contact with a black bear](#)
- December 9, 2018: The hosts of Good Morning America [engage in direct contact with a civet](#)
- May 16, 2018: Wendy Williams [engages in direct contact](#) with a python
- October 31, 2017: Wendy Williams [engages in direct contact](#) with a blood python and leopard cubs

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<sup>81</sup> N.Y. Env’tl. Conserv. Law § 11-0538 (1)(b).

<sup>82</sup>Ex. 47, USDA Inspection Reports, CJ’s Great Cats World Park, Inc., Jul. 7, 2011; Jul. 20, 2013; and Sep. 21, 2013 for failure to exhibit dangerous animals with sufficient distance between the animals and the general public. The big cats were restrained by a hand-held leash during performances during all of these inspections; *see also* Ex. 48, *Federal watchdogs eye the Catman*, KUSA-TV, Jul. 7, 2016, *available here* <https://www.9news.com/article/news/investigations/federal-watchdogs-eye-the-catman/73-266823488> .

<sup>83</sup> Ex. 49, Request to Investigate Grant Kemmerer for Violations of New York State Law (Oct 17, 2019).



### III. SPECIES CONSIDERED TO BE DANGEROUS TO HUMAN HEALTH AND WELFARE

The purpose of 6 NYCRR Section 180.1 “is to list species of wildlife which present a danger to the health or welfare of the people of the State, individual residents, or indigenous wildlife populations.”<sup>84</sup> Currently, this regulation only identifies a few species: (1) lion, (2) raccoon dog, and (3) any animal similar in appear to a wolf or coyote.<sup>85</sup> The NYSDEC is proposing to expand this list to include the following:

- Canines in the Family Canidae (except domestic dogs and captive bred fennec foxes)
- Wolverines
- Badgers
- Raccoons
- Skunks
- Bears
- Cats in the Family Felidae (except domestic cats, feral cats, and certain hybrids)
- Non-human primates
- Elephants
- Rhinoceroses
- Crocodilians
- Certain species of monitor lizards
- Certain species anacondas and pythons
- Certain species of venomous reptiles

PETA fully supports expanding the list of dangerous wild animals to encompass all the species identified in the NYSDEC’s proposed rule, and recommends that the agency include additional species that are not currently under consideration, but pose similar risks to public safety.

#### A. PETA Supports Adding the Proposed Species to 6 NYCRR Section 180.1

Wild animals are unpredictable, and under stress *any* animal can pose a physical danger to humans. Animals instinctually will act to protect themselves against a perceived threat, and may claw at, bite, or kick an unfamiliar person, or flee from the situation.<sup>86</sup> For large and strong wild animals, their sheer size and strength alone can kill or cause severe injury to humans, even if unintentional. The predatory nature of many wild animals and the “fight or flight” instinct of all wild animals places any person at risk of bodily harm when handling or coming in close contact with them.<sup>87</sup>

In addition to physical harm, several zoonotic diseases, including tuberculosis, herpes, rabies, smallpox, leptospirosis, salmonellosis, E. coli, and dermatomycosis, can be transmitted between animals and members of the public who come in contact with exhibited animals. The Centers for Disease Control and Prevention (CDC) recognizes animal bites as one of the most common

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<sup>84</sup> 6 NYCRR § 180.1(a).

<sup>85</sup> 6 NYCRR § 180.1(b).

<sup>86</sup>Ex. 27, *They're Natural Born Killers: Wild Animals in Captivity Inherently Dangerous*, ABC News, Dec. 28, 2007.

<sup>87</sup>Ex. 50, *Death of elephant handler is ruled an accident*, Associated Press, Jan. 23, 2003 (quoting one zoo official who attributed an elephant handler’s death as possibly due to the elephant’s “flight or fight” instinct).

sources of zoonotic disease exposure and infection, which often requires treatment and hospitalization in humans.<sup>88</sup>

While all wild animals pose a risk, some species because of their size, strength, instinctual behaviors, or potential to be a disease vector are more dangerous than others. Particularly dangerous wild animals include nondomestic felids, nondomestic canids, bears, non-human primates, and elephants—all of which the NYSDEC is proposing to include in 6 NYCRR Section 180.1.<sup>89</sup>

### 1. *Nondomestic felids*

All nondomestic felids and any felid hybrids are dangerous, including but not limited to lions, tigers, leopards, snow leopards, clouded leopards, cougars, cheetahs, hyenas, lynxes, servals, caracals, bobcats, ocelots, wildcats, and hybrids thereof. Since 1990, nondomestic felids have killed at least 25 people and injured more than 280 in the United States alone—and these are only the known, documented reports.<sup>90</sup> “Despite the appearance of pseudo-domestication in some trained tigers, these animals retain their predatory instincts and neural-visceral reflexes, and they can inflict serious wounds using their teeth or claws suddenly and without forewarning.”<sup>91</sup> Further, “[t]igers (and other large cats) have the ability to cause significant trauma and hidden injuries. The most common location for these injuries is the nape of the neck—tigers and other large cats can realign their jaws so that they can bite down between a victim’s vertebrae and into the spinal cord. Bite wounds can also result in significant bacterial infections.”<sup>92</sup>

Even before a felid is full-grown, they present a danger to the public. Wild felid cubs have caused injuries to humans.<sup>93</sup> Felid hybrids, such as savannah cats and Bengal cats, are just as dangerous,<sup>94</sup> and in recent years have become popular exotic “pets.”<sup>95</sup>

### 2. *Nondomestic canids*

All nondomestic canids—including wolves, foxes, jackals, coyotes, and more—are dangerous animals. Like wild felids, canids have a predatory nature coupled with fast reflexes, high energy, piercing claws, strong jaws, and sharp teeth. There are numerous examples of wolf hybrids

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<sup>88</sup>Ex. 51, CDC, *Compendium of Measures To Prevent Disease Associated with Animals in Public Settings* (2005).

<sup>89</sup> Even the United States Department of Agriculture identifies “lions, tigers, wolves, bears, [and] elephants” as dangerous animals. 9 C.F.R. § 2.131(d)(3).

<sup>90</sup>Ex. 1, PETA, *Big-Cat Incidents in the United States*.

<sup>91</sup>Ex. 52, Nyhus, P.J., et al. (2003). *Dangerous Animals in Captivity: Ex Situ Tiger Conflict and Implications for Private Ownership of Exotic Animals*. *Zoo Biology*, 22, 573–579.

<sup>92</sup>*Id.*

<sup>93</sup>Ex. 45, PETA, *Tiger Cub Incidents in the United States*.

<sup>94</sup> Ex 53, *Hybrid Wild Cat Stalks Two Children in North London*, International Business Times, Sept. 30, 2019; Ex. 54, *Exotic cat breaks into home, attacks family pet outside infant’s bedroom*, NBC 10, Nov. 22, 2017; Ex. 55, *First they heard a shriek, then saw the terror cat*, Providence Journal, Nov. 21, 2017.

<sup>95</sup> Ex. 56, *Wild Cat Hybrid Fad In California Concerning to Pet Experts*, CBS, Nov. 5, 2013 (“An exotic hybrid is the result of crossbreeding a domestic cat with an exotic ‘wild’ cat, like a wild African serval or an Asian leopard cat. You can’t privately own wild cats like a serval in California, but you can take home the next best thing: a hybrid.”); Ex. 57, *Exotic animals gain popularity, but owners, experts advise researching before you adopt or buy*, Herald & Review, July 6, 2019.

attacking and killing people.<sup>96</sup> Urban-dwelling coyotes have attacked humans outside their homes or in the street and are unpredictable, aggressive, and are even capable of killing children.<sup>97</sup> The majority of documented coyote attacks are categorized as predatory attacks.<sup>98</sup> Wild canid species are also known to carry rabies.<sup>99</sup> Rabies is not only a dangerously transmissible disease, it can cause the host to become more aggressive and likely to attack.<sup>100</sup>

### 3. Bears

Bears are dangerous wild animals who are capable of severely mauling and killing humans, as evidenced by a recent incident in which a woman's arm was torn off by two captive bears when she tried to feed them through their cage.<sup>101</sup> Captive bears have killed at least 6 humans and injured more than 60 in the United States since 1990, according to documented reports.<sup>102</sup> Captivity, combined with lack of space and environmental complexity typically found in roadside zoos and traveling exhibits, causes extreme psychological distress to these highly active and intelligent carnivores, which can manifest as or exacerbate aggression in bears.<sup>103</sup>

### 4. Nonhuman primates

Great apes and other large primates are known to be extremely strong and dangerous, and have injured over 280 humans in the United States alone since 1990.<sup>104</sup> All primates, not only large-bodied apes and macaques, are dangerous. Primates have sharp teeth, are naturally aggressive, and have complex social hierarchies.<sup>105</sup> To establish dominance within a group, primates may bite other group members. "Pet" primates may have their teeth removed because of their propensity to bite and injure humans.<sup>106</sup>

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<sup>96</sup> Ex. 58, *8-day-old baby mauled to death by family's wolf-hybrid dog*, ABC 7, March 11, 2018; Ex. 59, *Wolf hybrid kills Nye County woman*, Associated Press, Oct. 6, 2007; Ex. 60, *Attacked in his sleep by a wolf dog: Five-year-old boy died after he was 'partially eaten' by hybrid*, Daily Mail, June 29, 2011.

<sup>97</sup> Ex. 61, Howell, R.G. (1982). The Urban Coyote Problem in Los Angeles County. *Proc. Tenth Vertebrate Pest Conf*, 22; Ex. 62, White, L.A. & Gehrt, S.D. (2009). Coyote Attacks on Humans in the United States and Canada. *Human Dimensions of Wildlife*, 14, 419–432.

<sup>98</sup> Ex. 62, White & Gehrt (2009).

<sup>99</sup> Ex. 63, World Health Organization (2013). *WHO Expert Consultation on Rabies: Second report*. Geneva: WHO Press.

<sup>100</sup> Ex. 64, *Fox suspected in attack Lake Harriet caught; woman grabbed jaws to free herself*, Star Tribune, Aug. 17, 2016 ("Incidents in Minneapolis of mammals having rabies are rare, and it's unusual for a fox to venture so close to a human, Hairfield said. 'This one was very aggressive,' Hairfield said. 'This one came out and attacked, unprovoked, two people; one was jogging down the road and the other was taking a bicycle off a car.'")

<sup>101</sup> Ex. 65, *Camper has her arm ripped off by two bears after reaching into a cage to feed the animals at a private zoo in Russia*, Daily Mail, April 10, 2019; see also Ex 66, *Man mauled to death by captive grizzly in Montana*, Fox News, Nov. 5, 2012; Ex. 67, *Bear mauls caretaker to death in Ohio*, Associated Press, Aug. 20, 2010.

<sup>102</sup> Ex. 2, PETA, *Bear Incidents in the United States*.

<sup>103</sup> Ex. 68, Decl. of Else Poulsen, Sept. 20, 2010, at ¶ 17.

<sup>104</sup> Ex. 3, PETA, *Primate Incidents in the United States*.

<sup>105</sup> Ex. 69, Bernstein, I., & Gordon, T. (1974). The Function of Aggression in Primate Societies: Uncontrolled aggression may threaten human survival, but aggression may be vital to the establishment and regulation of primate societies and sociality. *American Scientist*, 62(3), 304-311.

<sup>106</sup> Ex. 70, *The Perils of Keeping Monkeys as Pets*, National Geographic, Sept. 16, 2003.

The close evolutionary relationship between human beings and nonhuman primates increases the risk of sharing communicable zoonotic diseases.<sup>107</sup> Indeed, some of the most significant infectious diseases of human beings have been traced back to zoonotic transmission from primates, including HIV/AIDS and malaria. Though these are some of the more devastating examples, there are numerous other viral, bacterial, and parasitic disease agents of nonhuman primates that cause disease in humans.

Herpes B virus can be carried by a number of nonhuman primate species.<sup>108</sup> Macaques often exhibit no overt symptoms of disease when infected with Herpes B and yet can pass the virus to humans, which is often fatal unless treated early.<sup>109</sup> For example, in 1997, a worker at a primate facility became infected and died after a macaque splashed water contaminated with fecal matter into her eye.<sup>110</sup> Other viral agents capable of being carried and transmitted by nonhuman primates include measles, monkeypox, and viral hepatitis.<sup>111</sup> For many viral agents, infection can be serious and even deadly in human patients while remaining undetected in nonhuman primates.<sup>112</sup>

A few bacterial pathogens shared between nonhuman primates and human beings are particularly dangerous to human health. Similar to elephants, human tuberculosis is a common disease of captive nonhuman primates. Tuberculosis is prevalent in nonhuman primates in the United States.<sup>113</sup>

## 5. *Elephants*

Elephants have a propensity to attack, and documented reports indicate that they have killed at least 20 people and injured more than 140 in the United States alone since 1987.<sup>114</sup>

Elephants also carry and succumb to the same strain of tuberculosis as humans: *M. tuberculosis* (TB). Despite being difficult to detect, TB is well documented as a common disease of captive elephants. Between 1994 and 2010, tuberculosis was confirmed by culture in 50 U.S.

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<sup>107</sup>Ex. 71, Gillespie, T.R., et al. (2008). Integrative Approaches to the Study of Primate Infectious Disease: Implications for Biodiversity Conservation and Global Health. *Yearbook of Physical Anthropology*, 51, 53–69.

<sup>108</sup>Ex. 72, Coulibaly, C., et al. (2004). A natural asymptomatic herpes B virus infection in a colony of laboratory brown capuchin monkeys (*Cebus apella*). *Laboratory Animals*, 38, 432–438.

<sup>109</sup>Ex. 73, Weigler, B.J. (1992). Biology of B Virus in Macaque and Human Hosts: A Review. *Clinical Infectious Diseases*, 14(2), 555–567.

<sup>110</sup>Ex. 74, CDC, *Fatal Cercopithecine herpesvirus 1 (B Virus) Infection Following a Mucocutaneous Exposure and Interim Recommendations for Worker Protection*, MMWR Weekly, Dec. 18, 1998.

<sup>111</sup>Ex. 75, Renquist, D.M. & Whitney, R.A. (1987). Zoonoses acquired from pet primates. *Veterinary Clinics of North America: Small Animal Practice*, 17(1) 219–240.

<sup>112</sup>Ex. 76, Smetana, H.F. & Felsenfeld, A.D. (1969). Viral hepatitis in subhuman primates and its relationship to human viral hepatitis. *Virchows Arch. Abt. A Path. Anat.*, 348(4), 309–327; see also Ex. 75, Renquist & Whitney (1987).

<sup>113</sup>Ex. 77, Merck Vet Manual, *Bacterial Diseases of Nonhuman Primates* (2014); see also Ex. 78, CDC, *Tuberculosis in imported nonhuman primates – United States June 1990 to May 1993*. MMWR Weekly, Jul. 30, 1993 (The CDC determined that 7 percent of nonhuman primate imports into the U.S. between 1990 and 1993 had evidence of tuberculosis infection).

<sup>114</sup>Ex. 4, PETA, *Elephant Incidents in the United States*.

elephants—approximately 12 percent of the country’s elephant population during that period.<sup>115</sup> Transmission of TB between elephants and humans has been documented in the literature, including cases of known elephant-to-human transmission.<sup>116</sup> TB is predominantly a disease of humans and is the leading cause of death by infectious disease, globally.<sup>117</sup>

Between the potential for serious injury or death from attacks and because elephants are known to carry and transmit tuberculosis, elephant keeping is often considered one of the most dangerous jobs in America.<sup>118</sup>

## **B. PETA Proposes Including Additional Special to 6 NYCRR Section 180.1**

In addition to the species that the NYSDEC is proposing to add to 6 NYCRR Section 180.1 as dangerous, the agency should also consider including the following species.

### *1. Camels*

Bactrian (*Camelus bactrianus*) and dromedary (*Camelus dromedaries*) camels are long-lived, large ruminants who can be extremely dangerous due to their massive size, unique physical traits, and unpredictable, skittish behavior. Bactrian camels reach a height of 6 feet and can exceed 2,000 pounds, while dromedaries reach a height of 6.5 feet and can exceed 1,000 pounds. Males in particular can be extremely dangerous and will attack people and other animals without warning.<sup>119</sup> Camels are capable of bucking, kicking, stomping, and trampling with their very strong, long legs. They can use their massive bodies to push, shove, or crush a person instantly.

The GFAS has strict standards on the handling of ruminants, including camels, which it considers to be “large, potentially dangerous species, with an ability to kick out in multiple directions. Camels can also inflict serious bite wounds.”<sup>120</sup> The following incidents demonstrate the danger of camels:

- July 2017: A camel who was part of the Lewis and Clark Circus attacked a handler while being unloaded from a trailer at the Charles County fairgrounds in Maryland. The employee was airlifted to a hospital with severe head and leg injuries.<sup>121</sup>

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<sup>115</sup>Ex. 79, Mikota, S. K. & Maslow, J.N. (2011). Tuberculosis at the human–animal interface: An emerging disease of elephants. *Tuberculosis*, 91(3), 208–211.

<sup>116</sup>Ex. 80, Zlot, A., et al. (2016). Diagnosis of Tuberculosis in Three Zoo Elephants and a Human Contact—Oregon, 2013. *Morbidity and Mortality Weekly Report*, 64(52), 1398–1402; Ex. 81, Murphree, R., et al. (2011). Elephant-to-human transmission of tuberculosis, 2009. *Emerging Infectious Diseases*, 17(3), 366–371; Ex. 82, Michalak, K., et al. (1998). *Mycobacterium tuberculosis* infection as a zoonotic disease: transmission between humans and elephants. *Emerging Infectious Diseases*, 4(2), 283–287.

<sup>117</sup>Ex. 83, Mikota, S.K. (2009). Stress, Disease, and Tuberculosis in Elephants. In D.L. Forthman (Ed.), *An Elephant In The Room: The Science And Well-Being Of Elephants In Captivity*. (pp. 74–84).

<sup>118</sup>Ex. 84, Toscano, G. (1997). Safety and Health: Dangerous Jobs. *Compensation and Working Conditions*. 57–60.

<sup>119</sup> Ex. 85, Aubè L, Fatnassi M, Monaco D, Khorchani T, Lacalandra GM, Hammadi M, Padalino B. (2017) Daily rhythms of behavioral and hormonal patterns in male dromedary camels housed in boxes. *PeerJ* 5:e3074.

<sup>120</sup> Ex. 86, Global Federation of Animal Sanctuaries, Standards for Ruminant Sanctuaries, April 2019, at 46.

<sup>121</sup> Ex. 87, *Camel Attacks Man at Maryland Fairgrounds*, WFMY News 2, July 14, 2017.

- May 2016: The owner of a camel in India was attacked, mauled and killed after leaving the animal exposed outside in the heat all day. The camel reportedly lifted the man by the neck and threw him to the ground when the man tried to untie the animal. The camel subsequently “chewed the body and severed the head” and was unable to be calmed down for six hours.<sup>122</sup>
- May 30, 2015: A 10-year-old girl suffered serious injuries to her arm during a drive-thru public feeding interaction with a camel at the Virginia Safari Park. The family filed a lawsuit against the zoo and reached a \$155,000 settlement for the injuries the girl sustained.<sup>123</sup>
- January 11, 2015: A camel trampled two men to death at the Camel Kisses Farm in Texas. When they arrived at the scene, police had to shoot the camel.<sup>124</sup>
- April 22, 2007: A woman was crushed to death by a 4-year-old camel at Mini-Akers Exotic Animals in Florida after the animal kicked her and then sat on her.<sup>125</sup>

## 2. *Otters*

Otters have been known to bite humans who infringe on their territory, both in the wild and in captivity.<sup>126</sup> Like many other marine mammals, otters are predatory in nature, have sharp teeth, and a strong jaw. Despite their small size, otters are not “placid, cuddly creature[s]” and have been observed hunting alligators.<sup>127</sup> The following incidents demonstrate the danger of otters:

- June 19, 2019: SeaQuest—a petting zoo and roadside aquarium with locations nationwide—was cited by the USDA after an otter used for public interactions had bitten visitors on multiple occasions. The USDA noted that “[o]tters can be aggressive and have strong teeth and a powerful bite. They have the potential to cause serious injury to a person.”<sup>128</sup>

<sup>122</sup> Ex. 88, *Tied in Heat All Day, Angry Camel Severs Owner's Head*, The Times of India, May 23, 2016.

<sup>123</sup> Ex. 89, *Girl bitten by camel to receive settlement from Rockbridge safari park*, Roanoke Times, Aug. 18, 2016.

<sup>124</sup> Ex. 90, *Texas camel tramples 2 people to death*, Las Vegas Review-Journal, Jan. 11, 2015.

<sup>125</sup> Ex. 91, *Camel Sits On, Kills owner of Florida exotic animal farm*, Ocala Star Banner, Apr. 25, 2007.

<sup>126</sup> Ex. 92, Belanger, M., et al. (2011). *A review of violent or fatal otter attacks*, IUCN Otter Spec. Group Bull, 28(1) (“A total of 39 instances of wild otter attacks were found in news articles (Table 1) with almost all of these involving the river otter (*Lontra canadensis*). Within these cases, the number of victims for each otter interaction ranged from 1 to 12 individuals. The age of victims ranged from an infant to a 96-year-old. Injuries ranged from a nip on the finger to deep gashes with some requiring as many as 200 stitches. Rabies was confirmed in 24 to 66% of the cases.”).

<sup>127</sup> Ex. 93, *Can an Otter Take Down a Human?* Outside Online, Mar. 21, 2014 (“Otters boast a sharp set of canines and crushing molars. And theirs is a formidable bite, roughly comparable in force to a German shepherd’s, which can break hand bones but mostly punctures or bruises skin.”).

<sup>128</sup> Ex. 94, USDA Inspection Report for SeaQuest Aquarium, June 19, 2019; *see also* Ex 95, *SeaQuest Fort Worth at Ridgmar Mall cited after animals bite visitors*, Culture Map Fort Worth, Aug. 2, 2019.

- January 2019: A rabid otter attacked multiple people in Florida before police located and shot the animal. The otter latched on to one woman’s leg and would not release despite the woman running for approximately 25 yards.<sup>129</sup>
- March 2018: A 77-year-old kayaker was attacked by an otter in Florida who jumped onto her boat and began biting and clawing her face. The woman received stitches and treatment for rabies.<sup>130</sup>
- August 2016: Between three and five otters attacked two teenage boys swimming in a lake in California resulting in injuries to their necks, legs, and feet, which required treatment and resulted in the boys receiving rabies shots.<sup>131</sup>
- July 31, 2014: A woman and her 8-year-old grandson were attacked in Washington state by an otter while swimming—the woman sustained a significant injury to her eye and required “hundreds of stitches” while her grandson had nine staples in his head and was covered in cuts and scrapes.<sup>132</sup>

### 3. *Kangaroos and Wallabies*

Kangaroos and wallabies have a propensity to bite, kick, and “punch.” They have powerful hind legs with sharp claws and will instinctually kick as a defense mechanism. Kangaroos often fight each other for dominance, so it is within their nature to show aggression.<sup>133</sup> Both in the wild and in captivity, kangaroos have attacked humans, resulting in serious and extensive injuries.

- March 4, 2015: The USDA cited Patrick Clancy—dba Jungle Habitat in Tennessee—for exhibiting a kangaroo for public photo-ops, after the inspector was nearly bitten by the animal.<sup>134</sup>
- November 2013: Visitors at the Riverbanks Zoo in South Carolina filmed as a kangaroo started lunging at a keeper, who called out for help when it became clear he wasn’t able to fend off the animal.<sup>135</sup>
- May 2012: A woman in Australia was attacked by a kangaroo while walking to a bus stop to pick up her children. The woman sustained a 12-inch gash on her back and had to recover in the hospital.<sup>136</sup>

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<sup>129</sup> Ex. 96, *Maitland cop fatally shoots rabid otter after multiple people bitten – ‘It hung on for a long time,’* Orlando Sentinel, Jan. 15, 2019.

<sup>130</sup> Ex. 97, *Wild otter attacks 77-year-old Florida kayaker: ‘It didn’t want to come off,’* Fox News, March 7, 2018.

<sup>131</sup> Ex. 98, *Otter family attack two teenage boys swimming in California lake,* The Independent, Aug. 20, 2016.

<sup>132</sup> Ex. 99, *8-year-old boy, grandmother survive vicious otter attack,* KOMO4 News, Aug. 1, 2014.

<sup>133</sup> Ex. 100, *Kangaroos clash on camera in fight for dominance over the other,* ABC News, April 29, 2018.

<sup>134</sup> Ex. 101, *USDA Inspection Report, Patrick Clancy,* Mar. 4, 2015.

<sup>135</sup> Ex. 102, *Zookeeper throws punches at boxing kangaroo,* 9News Australia, Nov. 25, 2013.

<sup>136</sup> Ex. 103, *Woman stalked by rogue kangaroo for TWO DAYS before vicious attack which left her with 12 inch scar,* Daily Mail, May 29, 2012.

- September 2011: An 80-year-old man was left in fair condition and rushed to the hospital after being attacked for 15 minutes by a 6-foot-tall, 200-pound male kangaroo at Kokas Exotics in Ohio.<sup>137</sup>
- November 2009: In Australia, a wallaby jumped out of the bushes, grabbed a 2-year-old toddler's head, and pummeled the girl's body repeatedly with their back legs. The left side of the toddler's face and body was covered in wounds.<sup>138</sup>

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<sup>137</sup> Ex. 104, *Kangaroo at farm injures man, 80*, The Blade, Sept. 21, 2011.

<sup>138</sup> Ex. 105, *Girl, 2, battered in savage attack by wallaby that sprang from bushes at Australian home*, The Daily Mail, Nov. 20, 2009.