

February 17, 2021

Via email

General Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
osd.mc-alex.ocmo.mbx.guidance-documents@mail.mil

Dear Secretary Austin:

I am counsel to People for the Ethical Treatment of Animals (PETA), and I am writing to submit a petition pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 553(e), urging the U.S. Department of Defense (DOD) to commence rulemaking proceedings to eliminate the cruel and unnecessary killing of animals in the annual joint military training exercise known as Cobra Gold. PETA submits this petition to DOD as the agency that oversees the U.S. Navy, which administers the U.S. Marine Corps, the division of the armed forces that conducts the Cobra Gold training program.

During Cobra Gold, Marines and training instructors in Thailand kill chickens with their bare hands, skin and eat live geckos, consume live scorpions and tarantulas, and decapitate king cobras—a species vulnerable to extinction—in order to drink their blood as part of purported training in food procurement. Viable animal-free methods exist for this practice, which is both unnecessary to the survival of troops and that inflicts unjustified pain and suffering on animals. In addition, the use of live animals in Cobra Gold poses a zoonotic disease threat akin to the COVID-19 pandemic currently wreaking havoc across the world.

PETA therefore requests that DOD initiate rulemaking proceedings to discontinue the use of live animals in Cobra Gold. PETA's petition for rulemaking, including proposed regulatory language and an explanation of the legal and factual bases for this request, is attached.

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS
FOUNDATION

Washington
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

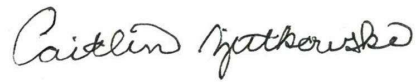
PETA FOUNDATION IS AN
OPERATING NAME OF FOUNDATION
TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

Thank you for your time and consideration of this important matter.

Very truly yours,

A handwritten signature in black ink that reads "Caitlin Zittkowski". The signature is written in a cursive, flowing style.

Caitlin Zittkowski
Counsel
PETA Foundation
2154 W. Sunset Blvd.
Los Angeles, CA 90026
caitlinz@petaf.org

**Petition
Before the U.S. Department of Defense**

February 17, 2021

**Requesting Rulemaking to End the Use of Live Animals
in the Annual Cobra Gold Training Program**

Submitted by
People for the Ethical Treatment of Animals

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I. Introduction

People for the Ethical Treatment of Animals (PETA) submits this petition pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 553(e), requesting that the U.S. Department of Defense (DOD) commence rulemaking proceedings to eliminate the cruel and unnecessary killing of animals in the annual joint military training exercise known as Cobra Gold. PETA submits this petition to DOD as the agency that oversees the U.S. Navy, which administers the U.S. Marine Corps, the division of the armed forces that conducts the Cobra Gold training program.

Cobra Gold is the largest joint military exercise in Southeast Asia and is sponsored by Thailand and the United States.¹ During Cobra Gold, Marines and training instructors in Thailand kill chickens with their bare hands, skin and eat live geckos, consume live scorpions and tarantulas, and decapitate king cobras—a species vulnerable to extinction—in order to drink their blood.² While the exercise masquerades as training in food procurement, its true purpose appears to be part of a larger effort to build camaraderie among the troops through conduct that is both unnecessary to the survival of troops and that inflicts unjustified pain and suffering on animals. Although DOD guidance instructs that non-animal methods should be used where possible in a wide range of training exercises, and even though myriad animal-free methods are available for effective food procurement training, the DOD has continued to refuse to follow its own policies. In addition to causing needless animal suffering, the use of live animals in Cobra Gold poses a zoonotic disease threat akin to the COVID-19 pandemic currently wreaking havoc across the world. The DOD has ended the use of live animals in a number of military training exercises and should use its authority to do so again here. PETA therefore requests that the DOD initiate rulemaking proceedings to discontinue the use of live animals in Cobra Gold. Proposed regulatory language is included below, following an explanation of the legal and factual bases for this request.

¹Dylan Gresik, *PETA Demands Marines Stop Drinking Cobra Blood, Eating Live Animals*, Marine Corps Times (Mar. 5, 2020), <https://www.marinecorpstimes.com/news/your-marine-corps/2020/03/05/peta-demands-marines-stop-drinking-cobra-blood-eating-live-animals/>.

²James Gordon, *Welcome to the Jungle: US Marines Drink the Blood of Beheaded Cobras and Chomp on Tarantulas and Scorpions As They Learn Survival Skills During Wargame Exercises in Thailand*, Daily Mail (Mar. 1, 2020), <https://www.dailymail.co.uk/news/article-8063555/US-Marines-war-games-exercise-teaches-survive-Thai-jungle.html>; *Coronavirus: US Marines Learn Jungle Survival in Thailand As Exercises Go Ahead Despite Epidemic*, South China Morning Post (Mar. 4, 2020), <https://www.youtube.com/watch?v=Ij3MMseHCnE&feature=youtu.be>; Isaac Ibarra, *Survival, Spiders and Cobras in Thailand*, Marines (Feb. 18, 2015), <https://www.marines.mil/News/News-Display/Article/566398/survival-spiders-and-cobras-in-thailand/>.



U.S. Marines kill cobras and drink their blood during the Cobra Gold training program.

II. Description of Petitioner

PETA has more than 6,500,000 members and supporters. It is the largest animal rights organization in the world and operates, in part, to promote and further the principle that animals are not ours to eat or abuse in any other way. Since its inception in 1980, it has championed ending the mistreatment of animals, including their exploitation in military training exercises, and expended significant resources in doing so. A number of its members and supporters have aesthetic, recreational, educational, and emotional interests in the species used in these military training exercises, including chickens, geckos, scorpions, tarantulas, and cobras and other snakes, as well as the wellbeing and treatment of animals generally. Thus, their interests are harmed when these animals are inhumanely killed or otherwise abused for military training.

III. Statutory and Regulatory Framework

The APA requires each agency to provide interested persons with “the right to petition for the issuance, amendment, or repeal of a rule.”³ Agencies must provide the public with notice of such rulemaking and provide interested persons the opportunity to participate by submitting comments on the proposed rulemaking.⁴ The APA also affords judicial review, allowing the reviewing court to either “compel agency action unlawfully withheld or unreasonably delayed,” or “hold unlawful and set aside agency action, findings, and conclusions found to be,” among other things, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; ... [or] unsupported by substantial evidence.”⁵

The APA exempts from its notice-and-comment rulemaking procedure requirements situations involving “a military or foreign affairs function of the United States.”⁶ However, military issues are not wholly exempted from rulemaking petitions:

[T]he exemption was intended only to encourage the issuance of such rules “by dispensing with all mandatory procedural requirements. Changes can then be

³5 U.S.C. § 553(e).

⁴5 U.S.C. § 553(b),(c).

⁵5 U.S.C. § 706.

⁶5 U.S.C. § 553(a)(1).

sought through the petition procedures . . . by which such rule making may also be initially invoked.” As Congress recognized, the value of public petitions is just as compelling for military and proprietary matters as for other subjects, and given the general flexibility agencies have in responding to petitions, there is no cause for a wholesale exemption. Moreover, the First Amendment provides a backstop, giving the public at least some right to petition agencies on any matter.⁷

Several federal courts have also found that actions by DOD and various branches of the military are judicially reviewable under the APA.⁸ In addition, in explaining the rulemaking process for the Navy, the Department of the Navy acknowledges that “[t]he public has the right to petition an agency to issue, modify, or rescind a rule.”⁹

In light of this authority, the APA’s requirements that concern petitioning agencies for rulemaking, providing notice and opportunities to comment on such rulemaking, and seeking judicial review of agency decisions apply to the DOD in this instance, notwithstanding the APA’s language exempting military functions.

IV. Arguments in Support of Requested Action

A. Summary

While the DOD characterizes the inhumane killing and consuming of animals, some of whom are consumed while alive, as food procurement training, the practice is reminiscent of fraternity-style hazing rituals and does not teach any practical survival skills—rather, as the Marine Corps has admitted, the main objective is to foster camaraderie amongst the troops, a goal which can easily be achieved through other means that do not involve causing animals to endure pain, suffering, and death.

The DOD’s own guidance on the use of live animals in training exercises lends support to this petition. DOD Instruction 3216.01 calls for the application of the most stringent standards that are applicable to a covered activity, in order to “protect the health and welfare of the animals,” and puts in place a series of requirements to ensure compliance with federal laws and

⁷Jason A. Schwartz & Richard L. Revesz, *Petitions for Rulemaking: Draft Report to the Administrative Conference of the United States*, at 28 (2014), <https://www.acus.gov/sites/default/files/documents/Petitions%2520for%2520Rulemaking%2520Draft%2520Report%2520%255B9-24-14%255D.pdf> (quoting Proceedings in the House of Representatives May 24 and 25, 1946 & Proceedings in the Senate of the United States March 12 and May 27, 1946, in Administrative Procedure Act, Legislative History, Sen. Doc. No. 248, 79th Cong. 2d Sess., at 359) (citing Arthur Earl Bonfield, *Military and Foreign Affairs Function Rule-Making Under the APA*, 71 Mich. L. Rev. 221, 356 (1972); Arthur E. Bonfield, *Public Participation in Federal Rulemaking Relating to Public Property, Loans, Grants, Benefits, or Contracts*, 118 U. Pa. L. Rev. 540, 600 (1970)).

⁸*See St. Clair v. Sec’y of the Navy*, 970 F. Supp. 645, 647, 648 (C.D. Ill. 1997); *Roe v. Shanahan*, 359 F. Supp. 3d 382, 405-06 (E.D. Va. 2019); *Teton Historic Aviation Found. v. United States*, 248 F. Supp. 3d 104, 111 (D.D.C. 2017); *Crane v. Sec’y of the Army*, 92 F. Supp. 2d 155, 165-66 (W.D.N.Y. 2000); *Ctr. for Biological Diversity v. Pirie*, 191 F. Supp. 2d 161, 163, 176-78 (D.D.C. 2002).

⁹Denise L. Randolph, *The Rulemaking Process*, Dep’t of the Navy, at 9, <https://www.secnav.navy.mil/smallbusiness/outreach/Documents/Sea-Air-Space-brief-Rulemaking.pdf> (last visited Dec. 7, 2020).

policies that pertain to the welfare of animals.¹⁰ Furthermore, the Instruction dictates that “[a]lternative methods to animal use will be considered and used whenever possible to attain the objectives of [research, development, testing, and evaluation] or training if such methods produce scientifically or educationally valid or equivalent results.”¹¹ The DOD, through this Instruction, advocates for the most humane treatment possible for animals used by the military in research and training exercises covered by the Instruction, yet in Cobra Gold those laudable goals have been cast aside in the interest of conducting what can only be described as an unnecessary bloodbath that causes extreme suffering to wildlife. Even if this training were legitimately teaching troops how to survive in the wild, several excellent alternatives to using live animals for food procurement training are available, including instructional books and videos created by former military survival instructors, interactive video programs, and a focus on non-animal sources of sustenance. In addition, previous decisions by military training centers to end the use of live animals for training exercises show that there is precedent for ending the use of live animals in Cobra Gold. Indeed, in light of the unprecedented ramifications of the COVID-19 pandemic and the zoonotic disease risks that consuming wild animals poses, the DOD should end the use of live animals in Cobra Gold to avoid putting military personnel and, by extension, civilians, in danger of becoming casualties of another preventable public health crisis. Continuing to use live animals who could pose zoonotic disease risks to troops also conflicts with DOD Directive 1322.18, which requires, “Service members of the DOD will receive, to the maximum extent possible, timely and effective individual, collective, and staff training, *conducted in a safe manner*, to enable performance to standard during operations [*emphasis added*].”¹²

B. Cobra Gold Is Not a Practical Sustenance Procurement Training Exercise but Rather a Cruel Method of Attempting to Build Camaraderie Among Troops

i. The Mutilation and Killing of Animals Serves No Practical Training Purpose

Although the DOD attempts to pass off dismembering and swallowing body parts of live geckos and other animals as well as drinking blood from the bodies of decapitated cobras as necessary for acquiring essential survival skills, the Marine Corps repeatedly refers to the exercise as a camaraderie-building activity and a “time honored tradition” that purportedly cements the relationship between U.S. troops and those of the other participants.¹³ Captain Ryan

¹⁰DOD Instruction 3216.01: Use of Animals in DOD Conducted and Supported Research and Training, §1.2 (2019), https://fas.org/irp/doddir/dod/i3216_01.pdf. The DOD implemented Instruction 3216.01 through Defense Health Agency Multi-Service Regulation (DHA-MSR) 6025.02 (2019), *available at* <https://health.mil/About-MHS/OASDHA/Defense-Health-Agency/Resources-and-Management/DHA-Publications>.

¹¹DOD Instruction 3216.01, §1.2. Although the Instruction does not apply to “[a]nimals, such as, but not limited to: livestock or poultry used or intended for use as food,” this exemption is clearly intended to apply to traditional domesticated and captive-bred “food animals” and not nongame and exotic wildlife species. *See id.* at §1.1(b). Furthermore, as discussed throughout this petition, the reality is that this training is not held for the purpose of providing food to the troops. It is no more than a cruel exercise used to demonstrate some sort of perverse “courage.”

¹²DOD Directive 1322.18: Military Training, §1.2(c) (2019), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/132218p.pdf>.

¹³*E.g.*, Jonathan Coronel, *Cobra Gold 20: Thai, US Marines Strengthen Bonds For Another Year*, U.S. Marine Corps (Mar. 9, 2020), <https://www.marines.mil/News/News-Display/Article/2105579/cobra-gold-20-thai-us-marines-strengthen-bonds-for-another-year/>; *see also* Marc Castaneda, *Cobra Gold 2017 Officially Kicks Off in*

Poitras, a joint terminal attack controller with the 31st Marine Expeditionary Unit, describes Cobra Gold as follows: “Whether it’s over drinking cobra blood together, coordinating fire support, or just sharing a meal in the field, every year Marines make friendships at every level [while participating in Cobra Gold], and strengthen the bond that the U.S. has with Thailand.”¹⁴ Other admissions by the DOD to the nonsurvival training function of the exercise include an article by Marine Corporal Isaac Ibarra stating that drinking cobra blood “is more of a local tradition ... and by some accounts it’s [*sic*] intended effect is to instill bravery.”¹⁵ As Captain Poitras’ statement confirms, non-animal activities could achieve the same goals of bringing troops together.¹⁶ Notably, as recently as 2017, the DOD acknowledged that the focus of Cobra Gold has shifted away from “tactical training” to “civic action programs such as humanitarian assistance and disaster relief,” further undermining the DOD’s assertion that training in food procurement is integral and the goal of the exercise.¹⁷

The DOD’s purported justification for the training also defies logic in a number of ways. First, one would assume that Marines, who are often first on the scene of any battle for hand-to-hand combat, would be resourceful enough when faced with the need to survive in a jungle environment to figure out how to kill and eat native wildlife and would do so if their lives depended on it. Another fact that may expose the true purpose of the “training” is that it does not appear to include instruction on locating and capturing the animals, which may present more of a challenge than killing them.¹⁸ For example, the cobras are captured in advance of the event and apparently decapitated by instructors who then offer the blood to participants. And presumably, nonvenomous reptiles and other animals are more prevalent and are typically able to be restrained more safely than venomous animals like cobras. Therefore, it is unclear why cobras and other venomous animals are a part of this exercise, unless the purpose is merely to add “color” and, in the case of the cobra, draw attention to the name of the event and reinforce the image of fearless Marines.

ii. Cobra Gold Promotes Cruelty to Animals

The practices depicted in videos of Cobra Gold are extremely cruel, and if they were conducted on U.S. soil, participants could be subject to prosecution for cruelty-to-animals under many states’ laws,¹⁹ even though activities supported or conducted by the DOD are supposed to

Thailand, U.S. Marine Corps (Feb. 14, 2017), <https://www.marforpac.marines.mil/News/News-Article-Display/Article/1084530/cobra-gold-2017-officially-kicks-off-in-thailand/>; Jean Lotus, *PETA: U.S. Marines Drinking Cobra Blood, Eating Live Wildlife Risk Disease*, UPI (Apr. 27, 2020), https://www.upi.com/Top_News/US/2020/04/27/PETA-US-Marines-drinking-cobra-blood-eating-live-wildlife-risk-disease/2081588015338/.

¹⁴Coronel, *supra* note 13.

¹⁵Ibarra, *supra* note 2.

¹⁶Coronel, *supra* note 13.

¹⁷Castaneda, *supra* note 13.

¹⁸For example, cobras of all species are notoriously shy and extremely difficult to locate in the wild. Even trained herpetologists fail more often than not. *See King Cobra*, National Geographic, <https://www.nationalgeographic.com/animals/reptiles/k/king-cobra/> (last visited Dec. 7, 2020). During Cobra Gold, Thai soldiers provide the snakes to the American troops in a box, already captured. *See Ibarra, supra* note 2.

¹⁹*State Animal Anti-Cruelty Laws*, Animal Legal & Historical Center, Michigan State University College of Law, <https://www.animallaw.info/content/state-animal-anti-cruelty-laws> (last visited Dec. 7, 2020).

comply with all statutes and regulations pertaining to animal welfare.²⁰ Also, the practices aren't sanctioned as humane by any reputable source, including the American Veterinary Medical Association (AVMA), whose guidelines for euthanizing animals are expressly referenced by the DOD in the regulations that implement Instruction 3216.01.²¹ Despite the DOD's published position on animal welfare in the training context, AVMA standards are not adhered to in Cobra Gold. For example, video footage documents a participant forcefully swinging a live chicken by her legs and then slamming her to the ground.²² While it is unclear whether the chicken died as a result, this method of killing poultry is not approved by the AVMA, and there is at least one method that would be acceptable as well as practical in a survival-type environment.²³

The ways in which geckos and cobras are dismembered and consumed are also undeniably inhumane and not in accordance with AVMA standards. *When no other option, such as gunshot, is available*, the least inhumane way to kill a reptile is by using blunt force trauma, conducted by trained and skilled personnel, followed by the use of an adjunctive method to ensure death.²⁴ The "training" and conduct depicted in the video falls short of even this least ideal AVMA standard. Because of their unique physiology, reptiles (and amphibians), can remain sensitive to pain for up to one hour after dismemberment, including decapitation, unless the brain is destroyed immediately.²⁵ Video footage of Cobra Gold documents live geckos who appear to have been gutted being offered to participants who bite into the animals in order to tear off limbs and flesh, which they then consume. According to descriptions by Marine personnel, it does not appear that cobras' brains are destroyed when they are decapitated, as required to prevent prolonged suffering.²⁶ And it should be obvious that the pain and suffering experienced by the scorpions and tarantulas as they are dismembered and consumed, reportedly while still alive, is also inhumane.²⁷ Despite the extreme cruelty inflicted during Cobra Gold, the photographs and videos document a complete indifference to the suffering of the animals. Instead, participants revel in the torture and deaths, in what can only be described as a party-like atmosphere.

Clearly, the animal abuse that occurs during Cobra Gold is ritualistic rather than instructive and calls into question two core values that all Marines are expected to exhibit and take great pride in: honor, which is defined in part by the Marine Corps as "the quality that empowers Marines to exemplify the ultimate in ethical and moral behavior" and courage, which is defined in part as the "moral ... strength ingrained in Marines ... to do what is right, to adhere to a higher standard of personal conduct."²⁸ Participation in unnecessary acts of cruelty to animals betrays those values.

²⁰See DOD Instruction 3216.01, *supra* note 10, at §§1.2 (a)-(c), 2.5(e).

²¹DHA-MSR 6025.02, *supra* note 10, at 6 (citing Am. Veterinary Med. Ass'n, *AVMA Guidelines for the Euthanasia of Animals* (2013)).

²²South China Morning Post, *supra* note 2; Gordon, *supra* note 2.

²³Am. Veterinary Med. Ass'n, *AVMA Guidelines for the Euthanasia of Animals*, 76-78 (2020), https://www.avma.org/sites/default/files/2020-01/2020_Euthanasia_Final_1-15-20.pdf.

²⁴*Id.* at 93.

²⁵See Melissa Kaplan, *Decapitation of Reptiles* (1997), <http://www.anapsid.org/decap.html>.

²⁶Ibarra, *supra* note 2.

²⁷*Id.*

²⁸U.S. Marines, *Human Resources and Organizational Management*, Marines, <https://www.hqmc.marines.mil/hrom/New-Employees/About-the-Marine-Corps/Values/> (last visited Oct. 14, 2020).

iii. Evidence Indicates That Cobra Gold Uses Species Vulnerable to Extinction

Cobra Gold may be placing at risk species who have been identified by the International Union for Conservation of Nature (IUCN), the global authority on the conservation status of species and the measures needed to safeguard biodiversity, and an organization to which several U.S. government agencies belong.²⁹ Multiple military news sources identify the cobras who are decapitated during the event as king cobras.³⁰ King cobras are one of two species of cobras native to Thailand who are identified as in need of protection by the IUCN.³¹ Specifically, king cobras are listed as “vulnerable,”³² meaning that they face “a high risk of extinction in the wild in the immediate future.”³³ Assuming that sources such as *Stars and Stripes*, a publication of the DOD’s Defense Media Activity organization, can be relied upon for accuracy, it is inexcusable that the DOD would allow the use of protected species in any event in which U.S. Marines participate.

The Indochinese Spitting Cobra is the second species of cobra native to Thailand and listed as vulnerable by the IUCN.³⁴ It is unclear if this species is also used in Cobra Gold. There are numerous photographs and videos of Cobra Gold that depict animals whose specific species or sub-species are not identified.

There is at least one reference in a video by a U.S. Marine to the consumption of meat from the Komodo dragon,³⁵ another species listed as vulnerable to extinction. The Komodo dragon is not native to Thailand, but given the total lack of respect for wildlife exhibited at the event, it is possible that meat from this protected species is somehow obtained and consumed. At the very

²⁹Int’l Union for Conservation of Nature (IUCN), *About*, <https://www.iucn.org/about> (last visited Oct. 14, 2020); Int’l Union for Conservation of Nature, *IUCN Members*, <https://www.iucn.org/about/members/iucn-members> (last visited Oct. 19, 2020).

³⁰See *Cobra Gold 20: US, Royal Thai Marines Participate in Jungle Survival Training*, Def. Visual Info. Dist. Serv. (Mar. 2, 2020), <https://www.dvidshub.net/image/6121613/cobra-gold-20-us-royal-thai-marines-participate-jungle-survival-training>; *Marines Drink Cobra Blood in Jungle Survival Training at Cobra Gold*, *Stars and Stripes* (Mar. 3, 2020), <https://www.stripes.com/news/pacific/marines-drink-cobra-blood-in-jungle-survival-training-at-cobra-gold-1.621046>; Hope Hodge Seck, *Marines Guzzle Snake Blood Once Again in Gnarliest Training Exercise* (Feb. 20, 2019), <https://www.military.com/daily-news/2019/02/20/marines-guzzle-snake-blood-once-again-gnarliest-training-exercise.html>; Dylan Gresik, *PETA Demands Marines Stop Drinking Cobra Blood, Eating Live Animals*, *Marine Corps Times* (Mar. 5, 2020), <https://www.marinecorpstimes.com/news/your-marine-corps/2020/03/05/peta-demands-marines-stop-drinking-cobra-blood-eating-live-animals/>; Dave Burke, *Soldiers Tear Snakes Faces Off and Drink Their Blood in Bizarre Ritual*, *Mirror* (Mar. 3, 2020), <https://www.mirror.co.uk/news/world-news/soldiers-tear-snakes-faces-drink-21627043>; *Wild Photos Show US Marines Munching On Scorpions and Washing Them Down With Snake Blood As They Learn to Survive in the Jungle*, *Business Insider* (Mar. 3, 2020), <https://www.businessinsider.in/slideshows/miscellaneous/wild-photos-show-us-marines-munching-on-scorpions-and-washing-them-down-with-snake-blood-as-they-learn-to-survive-in-the-jungle/slidelist/74449353.cms>.

³¹Thai National Parks, *King Cobra*, Species of Thailand, <https://www.thainationalparks.com/species/ophiophagus-hannah> (last visited Sept. 16, 2020).

³²IUCN, *King Cobra*, IUCN Red List, <https://www.iucnredlist.org/search?query=king%20cobra&searchType=species> (last visited Oct. 14, 2020).

³³IUCN, *IUCN Definitions*, https://www.iucn.org/downloads/en_iucn_glossary_definitions.pdf (last visited Oct. 14, 2020).

³⁴Thai National Parks, *Indo-Chinese Spitting Cobra*, Species of Thailand, <https://www.thainationalparks.com/species/naja-siamensis> (last visited Sept. 16, 2020).

³⁵See South China Morning Post, *supra* note 2.

least, the reference belies the DOD’s position that the event is intended to train U.S. Marines in the identification of native wildlife for the purpose of food procurement.

C. DOD Policy, Precedent, and the Availability of Effective Alternatives Support Ending the Use of Live Animals for Cobra Gold

i. DOD Policy Requires Using Alternatives to Animals When Possible

The continued use of live animals in Cobra Gold goes against the DOD’s 2019 directive that “[a]lternative methods to animal use will be considered and used whenever possible to attain the objectives of [research, development, test, and evaluation] or training if such methods produce scientifically or educationally valid or equivalent results.”³⁶ The directive expressly requires all components of the DOD to diminish and eliminate animal suffering, such as that exhibited during Cobra Gold, when alternatives to using animals exists.

Even if these purported food procurement exercises actually served their stated purpose, there is no shortage of training methods available that do not require the use of live animals. For example, in the book *Primitive Wilderness Skills, Applied & Advanced*, the authors—having themselves trained U.S. Army Survival Evasion Resistance and Escape (SERE) instructors—explain how to obtain food in nature.³⁷ Gretchen Cordy, a former Air Force survival instructor, hosts an instructional wilderness survival video series titled “Prepared to Survive.”³⁸ And with the advent of technology, virtual reality platforms are commonly used to train personnel in a variety of skills and across all sectors, including the military. For example, SERE specialists are already using virtual reality to prepare Air Force pilots for worst-case scenarios, and the DOD has been using virtual reality platforms to train infantry Marines since 2011.³⁹ Surely, the DOD could take a similar route if there truly is concern that Marines stranded in the jungle would be unable to identify and secure adequate food to survive. Furthermore, many non-animal food sources are available in jungle environments.⁴⁰ The wide availability of alternatives necessarily leads to the conclusion that, per the DOD’s own guidance, the agency must discontinue the use of live animals in Cobra Gold.

Furthermore, the DOD Instruction clearly dictates that “[p]rocedures will cause the least pain or distress to the minimum number of animals,” provides for nonterminal disposition of animals whenever possible, and requires that, where different legal or regulatory standards could apply, the DOD must “apply the standard that most stringently protects the health and welfare of the animals in question.”⁴¹ The Instruction’s language also demonstrates the DOD’s intent that this policy include a wide range of military activity, as activities conducted and supported by the DOD on foreign soil are also subject to its requirements.⁴² The practices used in Cobra Gold’s

³⁶DOD Instruction 3216.01, *supra* note 10, at §1.2; *see also* DHA-MSR 6025.02, *supra* note 10, at 13.

³⁷John McPherson & Geri McPherson, *Primitive Wilderness Skills, Applied & Advanced* (2001).

³⁸Gretchen Cordy, et al., *Prepared to Survive* (2005).

³⁹Military.com, *Infantry Marines Train With Virtual Reality Technology* (Mar. 9, 2016), <https://www.military.com/video/forces/marine-corps-training/infantry-marines-train-with-virtual-reality-technology/4793876222001>.

⁴⁰Gordon, *supra* note 2.

⁴¹DOD Instruction 3216.01, *supra* note 10, at §1.2(a),(e),(f).

⁴²DOD Instruction 3216.01, *supra* note 10, at §1.2(b),(c).

training program are exceedingly inhumane and flout the ethical scaffolding underlying the DOD's instruction.

ii. Precedent Exists for the DOD to Decide to Discontinue the Use of Live Animals

The DOD's history shows the agency's willingness to discontinue the use of live animals. For example, in 2011, the Marine Corps Mountain Warfare Training Center (MCMWTC) suspended its use of live animals in its survival training courses following discussions with PETA.⁴³ Nearly three decades ago, the U.S. Army's Dugway Proving Ground canceled a survival skills training course using animals after PETA asked then-Defense Secretary Les Aspin to intervene.⁴⁴ Clearly, there are precedents for troops to learn food procurement skills without using live animals in training drills that are undeniably cruel and risk spreading pathogens and disease.

D. The Use of Live Animals in the Cobra Gold Training Program Poses Significant Public Health Risks

The intentional consumption of fluids, such as blood from cobras, and of the flesh of wild animals during Cobra Gold places the troops and the public around the world at risk of being infected by an untold number of pathogens, some of which are likely unknown at this time just as COVID-19 was unknown until recently. Last year, Cobra Gold, which includes a variety of exercises, drew participants from 27 countries.⁴⁵ The photographs and videos of the food procurement "training" document the close proximity in which the troops carouse without any personal protective equipment. The DOD doesn't require its troops to take even these simple precautions, which have been imposed upon civilians around the globe in an attempt to control the spread of COVID-19. The failure of the DOD to acknowledge the threat posed to the troops and others they come in contact with by the event and the environment in which it is conducted is the height of irresponsibility.

Scientists agree that the COVID-19 pandemic originated in bats and that it most likely was transmitted to humans through the food supply.⁴⁶ Similarly, the handling and consuming of wildlife has facilitated a "spill over" into humans of deadly novel diseases such as SARS, Ebola, monkeypox, and Lassa fever—whereby, during slaughter, disease-carrying fluids from the animals, such as blood, saliva, and excrement can splash or splatter and be consumed or inhaled by humans.⁴⁷ If accidental contact with animals' bodily fluids poses zoonotic disease risks, those dangers increase with the intentional ingestion of these fluids. Additionally, the origins of HIV in

⁴³Col. Phillip Chandler (then commanding officer of the MCMWTC), e-mail to PETA (May 31, 2011).

⁴⁴Brent Israelsen, *Animals Live Through Survival Course*, Desert News (Mar. 20, 1993), <https://www.deseret.com/1993/3/20/19037988/animals-live-through-survival-course>.

⁴⁵Coronel, *supra* note 13.

⁴⁶Janice Kew & John Lauerma, *The Coronavirus Originated in Bats and Can Infect Cats*, *WHO Scientist Says*, TIME (May 8, 2020), <https://time.com/5834097/coronavirus-origin-bats-infect-cats-who/>.

⁴⁷Congress of the United States, Bipartisan Letter to the World Health Organization, the World Organization for Animal Health, and the Food and Agriculture Organization of the United Nations (Apr. 8, 2020), https://www.hydesmith.senate.gov/sites/default/files/2020-04/040820%20Booker-Graham%20WHO%20Wet%20Markets%20Letter_0.pdf.

humans have been tracked back to handling and killing animals for “bushmeat” (the flesh of wild animals).⁴⁸ According to the World Health Organization (WHO), in 1997, outbreaks of the highly pathogenic H5N1 strain of bird flu occurred in poultry on farms and in live-animal meat markets in Hong Kong. That year, Hong Kong became the site of the first-ever H5N1 infections in humans.⁴⁹ The Centers for Disease Control and Prevention (CDC) explains that most human infections of this virus have occurred through contact with infected birds, and when humans become infected, the mortality rate is about sixty percent.⁵⁰

The CDC warns that “[a]pproximately 75 percent of recently emerging infectious diseases affecting people began as diseases in animals.”⁵¹ The zoonotic disease risk from handling and killing animals is considered so high that the United Nations acting Executive Secretary of the Secretariat of the Convention on Biological Diversity Elizabeth Maruma Mrema supports the call for a worldwide ban on markets like the ones in China where COVID-19 and SARS likely originated.⁵² The director of the U.S. National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, is also encouraging the global community to pressure nations to close down such markets.⁵³ Sixty bipartisan U.S. lawmakers have also written to the WHO and other global bodies urging them to protect public health by closing live wildlife markets, and they are calling for a ban on the international trade in live wildlife when the purpose is not conservation.⁵⁴ Conservation experts have even warned that the exotic skins trade, in which species such as pythons, stingrays, and crocodiles are butchered for fashion, also increases the risk that dangerous viruses will spread to humans.⁵⁵ The Military Health System itself recognizes that vector-borne and zoonotic pathogens “comprise at least two-thirds of the 57 top infectious disease threats to Defense Department personnel.”⁵⁶ Intentionally exposing DOD personnel to disease reservoirs when zoonotic diseases already pose a significant threat to their health and safety unreasonably and unnecessarily amplifies these risks.

⁴⁸Paul M. Sharp & Beatrice H. Hahn, *Origins of HIV and the AIDS Pandemic*, Cold Spring Harbor Perspectives in Medicine (2011), <https://pubmed.ncbi.nlm.nih.gov/22229120/>.

⁴⁹World Health Organization, *H5N1 Avian Influenza: Timeline of Major Events* (Jan. 25, 2012), https://www.who.int/influenza/human_animal_interface/H5N1_avian_influenza_update.pdf.

⁵⁰Centers for Disease Control and Prevention, *Highly Pathogenic Asian Avian Influenza A(H5N1) in People* (Mar. 18, 2015), <https://www.cdc.gov/flu/avianflu/h5n1-people.htm>.

⁵¹Centers for Disease Control and Prevention, *CDC Unveils Redesigned Healthy Pets Healthy People Website* (Oct. 2, 2015), <https://www.cdc.gov/media/releases/2015/p1002-healthy-pets.html>.

⁵²Patrick Greenfield, *Ban Wildlife Markets to Avert Pandemics, Says UN Biodiversity Chief*, *The Guardian* (Apr. 6, 2020), <https://www.theguardian.com/world/2020/apr/06/ban-live-animal-markets-pandemics-un-biodiversity-chief-age-of-extinction>.

⁵³Joseph Guzman, *Fauci: It's Mind-Boggling That China's Wet Markets Are Still Operating During Coronavirus Pandemic*, *The Hill* (Apr. 3, 2020), <https://thehill.com/changing-america/well-being/prevention-cures/491025-fauci-mind-boggling-that-chinas-wet-markets>.

⁵⁴Congress of the United States, *supra* note 47.

⁵⁵Jane Dalton, *Coronavirus: "Exotic" Skins in Shoe and Handbag Fashion Stores Fuel Risk of Further Epidemics, Say Experts*, *The Independent* (Apr. 24, 2020), <https://www.independent.co.uk/news/uk/home-news/coronavirus-wildlife-trade-fashion-shoes-boots-handbag-python-stingray-a9460811.html>.

⁵⁶Military Health System, *Febrile and Vector-Borne Infections (FVBI) Surveillance*, <https://www.health.mil/Military-Health-Topics/Combat-Support/Armed-Forces-Health-Surveillance-Branch/Global-Emerging-Infections-Surveillance-and-Response/Febrile-and-Vector-Borne-Infections> (last visited Oct. 14, 2020).

Taking the risk of sparking another worldwide pandemic that may cost the lives of military personnel and civilians alike, or at a minimum sicken troops, is uncalled for, especially when effective alternatives to the Cobra Gold exercises are available.

V. Proposed Rule Change

PETA proposes that the DOD promulgate and implement the following rule:

Live animals shall not be used for any type of training, including food procurement training, during the Cobra Gold joint military exercise or similar exercises.

In the alternative, PETA proposes that the DOD use the same or similar language above if the agency decides to issue a directive, instruction, or other guidance eliminating the use of live animals in Cobra Gold.