

April 25, 2018

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Submitted via regulations.gov

**Comments of People for the Ethical Treatment of Animals in Opposing
 Renewal of, and Requesting Suspension of, PRT-751619, Submitted by Charles
 Jordan d/b/a NBJ Zoological Park, Ltd.**

I. Introduction

People for the Ethical treatment of Animals (“PETA”) urges the U.S. Fish & Wildlife Service (“FWS”) to reject Charles Jordan’s (“Jordan”) d/b/a/ NBJ Zoological Park, Ltd. (“NBJ”) application seeking renewal of his captive-bred wildlife (“CBW”) permit (PRT-751619) (the “application”) and, further, to suspend this permit. (Ex. 1). Jordan seeks a renewal of his CBW permit—which allows him to “take for normal husbandry practices” and to “deliver, receive, carry, transport, or ship in interstate commerce, *for the purpose of enhancement of propagation or survival,*” *id.* at 3 (emphasis added), the following species: Arabian oryx (*Oryx leucoryx*), ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), brown lemur (*Eulemur fulvus*), Diana Monkey (*Cercopithecus diana*), and Lar gibbon (*Hylobates lar*).

FWS should deny Jordan’s application for renewal of his CBW permit because the application:

- (1) indicates that he lacks the experience, staff, and facilities necessary to implement a true conservation breeding program;
- (2) fails to demonstrate that his activities will enhance the survival or propagation of the species of animals covered by the CBW permit in the wild;
- (3) fails to demonstrate that the primary purpose of the proposed activities is to facilitate conservation breeding;
- (4) fails to provide required material information and otherwise gives facially insufficient responses to the application’s questions; and
- (5) fails to demonstrate a showing of responsibility. Jordan’s lack of responsibility is readily evidenced by NBJ’s numerous violations of the Animal Welfare Act (“AWA”), 7 U.S.C. §§ 2131-2159. In one particularly egregious recent instance in

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April 2017, NBJ was cited for failing, *for over a month*, to seek veterinary care for a lemur whose right hand was ripped off during a fight with a cage mate, leaving her with exposed tissue and bone at the end of her limb. *See infra* Parts III.A and III.D. Instead of immediately having the lemur treated by a licensed veterinarian, NBJ saw it sufficient to “treat” the wound by providing the animal with antibiotics and applying a topical antibiotic ointment. *Id.*

Further, the FWS should suspend Jordan’s CBW permit because he appears to be engaging in AWA regulated activity without a valid license. *See* Screenshot of USDA, APHIS – Animal Care Inspection Report Search, Acis.aphis.edc.usda.gov (last visited Apr. 24, 2018) (Ex. 2) (listing NBJ’s AWA Certificate Status as “CANCELLED” as of July 3, 2017 for AWA Certificate No. 74-B-0571); USDA, *List of Active Licensees and Registrants* (Apr. 2, 2018), https://www.aphis.usda.gov/animal_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf (containing no information on Jordan or NBJ); *see also* App., Ex. 1 at 7 (a copy of NBJ’s AWA license is not included in Jordan’s application, despite his answer to Question 11 indicating otherwise). Jordan cannot legally engage in the conduct authorized under his CBW permit without a valid AWA license. *Compare* App., Ex. 1 at 3 (Jordan’s current CBW permit authorizes him to “deliver, receive, carry, transport or ship in interstate commerce, for the purpose of enhancement of propagation or survival” of the covered species) *with* 7 U.S.C. § 2134 (“No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, *unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.*” (emphasis added)). Thus, the FWS should suspend Jordan’s CBW permit. *See* 50 C.F.R. § 13.27(a) (“The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, *or with any applicable laws or regulations governing the conduct of the permitted activity.*” (emphasis added)).

In addition, FWS cannot legally issue the permit because it has failed to make all of the application materials available as a matter of public record in accordance with Section 10(c) of the Endangered Species Act (“ESA”). 16 U.S.C. § 1539(c); *see also Gerber v. Norton*, 294 F.3d 173 (D.C. Cir. 2002). Specifically, the FWS failed to make Jordan’s original CBW application available, as required by 50 C.F.R. § 17.21(g)(3) and *People for the Ethical Treatment of Animals v. United States Fish and Wildlife Service*, No. 1:11-cv-00809 (CMH/IDD) (Ex. 20) (Jan. 18, 2012 Consent Order).

Finally, since Jordan seeks blanket authorization for a broad array of activities over a period of five years, FWS cannot grant the request permit renewal without violating the ESA. *See, e.g.*, 16 U.S.C. § 1539(a), (c); 50 C.F.R. § 13.42; *see also infra* Part III.E. Jordan’s current CBW permit does not expire until June 5, 2020, and it is unclear whether the renewed permit Jordan seeks through the instant application would overlap with his existing permit, or whether, should FWS grant the renewal despite the objections detailed herein, it would commence on or after June 5, 2020. *See* App., Ex. 1 at 3 (copy of Jordan’s current CBW permit, issued Jun. 5, 2015 and expiring Jun. 5, 2020).

In light of the foregoing, as detailed herein and documented by the accompanying exhibits, the FWS should deny Jordan's permit renewal application and should instead suspend the permit. Indeed, the record makes clear that Jordan never should have received a CBW permit in the first instance, and renewing it based on this application would be arbitrary, capricious, an abuse of discretion, not in accordance with law, and in excess of the FWS's statutory authority and limitations. *See* 5 U.S. Code § 706(2)(A), (C).

Should the agency decide to renew the permit despite these objections, PETA hereby requests notice of that decision, pursuant to 50 C.F.R. § 17.22(e)(2), at least ten days prior to the issuance of the permit renewal via e-mail to DavidSc@petaf.org or telephone to 202-540-2190.

II. Legal Background

The ESA establishes a national policy “that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the Act].” 16 U.S.C. § 1531(c). In relevant part, the ESA prohibits persons from taking, importing or exporting, or “possess[ing], sell[ing], carry[ing], transport[ing], or ship[ping], by any means whatsoever” any species taken within the US, its territorial seas, or upon the high seas. *Id.* § 1538(a)(1)(A)-(D). Further, the ESA prohibits persons from delivering, receiving, carrying, transporting, or shipping, in the course a commercial activity, any endangered species, or selling or offering such species for sale in interstate or foreign commerce. *Id.* § 1538(a)(1)(E)-(F). “Persons” subject to the ESA include any “individual, corporation, partnership, trust, association, or any other private entity,” as well as all State and Federal departments, agencies, employees, and officers. *Id.* § 1532(13).

The ESA defines the term “take” to include “harass, harm, . . . wound, kill, . . . or to attempt to engage in any such conduct,” *id.* § 1532(19), and further defines the term “commercial activity” to include “all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.” *Id.* § 1532(2). “Harass” is defined by regulation as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3. As it pertains to captive animals, the definition of “harass” expressly exempts “generally accepted” animal husbandry practices “that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act,” and “generally accepted” breeding procedures, when those practices or procedures are “not likely to result in injury to the wildlife.” *Id.* “Harm” means “an act which actually kills or injures wildlife.” *Id.*

Section 10 of the ESA gives the FWS limited authority to issue permits to allow otherwise prohibited activities such as takes, transport, shipment, and sale *only* “for scientific purposes or to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(A) (emphasis added). Jordan seeks a renewal of his CBW permit pursuant to the second of these exceptions, which requires that he demonstrate that his activities will enhance the propagation or survival of the species at issue – hereinafter referred to as the “Enhancement Requirement.”

Pursuant to this limited authority, FWS regulations provide an exemption from § 10's prohibitions for foreign species that are captive-bred in the U.S. if the "purpose" of taking, transporting, shipping, or selling the captive-bred species "*is to enhance the propagation or survival of the affected species.*" 50 C.F.R. § 17.21(g)(1)(ii) (emphasis added). Persons who seek to engage in any of these activities must apply for, and obtain, a captive-bred wildlife permit ("CBW registration" or "CBW permit"). *Id.* § 17.21(g)(1), (2).

An applicant for a CBW permit must include information specified in 50 C.F.R. § 17.22(a)(1), including "[a] full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit," *id.*

§ 17.22(a)(1)(vii). In deciding whether to grant a CBW permit, the FWS "*will consider*" the issuance criteria specified in § 17.21(g)(3)(i), including whether "the expertise, facilities, or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife." *Id.* (emphasis added); *see also id.* § 17.22(a)(2) (in deciding whether to issue an enhancement permit, the FWS "*shall consider*" whether "the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objective stated in the application" (emphasis added)). The FWS is not authorized to issue a CBW permit where the applicant has "failed to demonstrate a valid justification for the permit and a showing of responsibility" or the FWS finds that the applicant is "not qualified." *Id.* § 13.21(b)(3)-(5).

Most importantly, the FWS has repeatedly recognized that, to meet the Enhancement Requirement, CBW permit applicants must demonstrate how their proposed activities directly relate to the survival of the species *in the wild*. *See, e.g.*, Fax from Anna Barry, Senior Biologist, Division of Management Authority (DMA), FWS, to John F. Cuneo, Jr., Hawthorn Corp. (Mar. 12, 2012) (Ex. 3); *accord* E-mail from Anna Barry to Anton and Ferdinand Fercos-Hantig (Feb. 8, 2012) *id.* The applicant—not the FWS or private commenters—bears the burden of demonstrating whether it satisfies the Enhancement Requirement. *See* 50 C.F.R. § 13.21(b) ("fail[ure] to demonstrate a valid justification for the permit" warrants denial); *see also, e.g.*, Letter from Anna Barry to John F. Cuneo Jr. (Oct. 14, 2011) *id.* ("To meet the requirements under the ESA *you need to be able to demonstrate* how your proposed activities directly relate to the survival of this species in the wild." (emphasis added)).

III. Argument

A. Jordan's CBW Permit Should Not Be Renewed Because Jordan Lacks the Experience, Staff, and Facilities Necessary to Enhance the Propagation or Survival of the Arabian Oryx, Ring-Tailed Lemur, Black and White Ruffed Lemur, Brown Lemur, Diana Monkey and Lar Gibbon.

In deciding whether to grant a CBW permit, § 17.21 of the FWS regulations requires the agency to consider "whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife." 50 C.F.R. § 17.21(g)(3)(ii). Section 17.22 likewise provides that, in deciding whether to grant an enhancement permit, the FWS "*shall consider*" whether "the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application." *Id.* § 17.22(a)(2)(vi) (emphasis added).

The FWS has repeatedly denied CBW permit applications where applicants have failed to provide sufficient information to demonstrate that either themselves or their staff have the necessary experience in handling or maintaining the species sought to be covered by the CBW permit. *See, e.g.*, Letter from Timothy J. Van Norman, Chief, Branch of Permits, DMA, FWS, to Shawn Ho (Jan. 29, 2016) (Ex. 4); Letter from Timothy J. Van Norman, Chief, Branch of Permits, DMA, FWS, to Ricky Garrett, Zoofari Animal Park and Preserve (July 1, 2014) *id.*; Letter from Timothy J. Van Norman, Chief, Branch of Permits, DMA, FWS, to Sandy Thomas (Jan. 5, 2017) *id.* For example, in 2015, the FWS denied a CBW permit for tigers (*Panthera tigris*) based on the fact that the application failed to provide “specific information on [applicant’s] husbandry and breeding experience” with tigers and since, upon being notified of this deficiency, applicant failed to withdraw or amend his application. E-Mail from Michael Moore, Supervisory Policy Specialist, Branch of Permits, DMA, FWS, to Scott Gregory, Great Bend-Brit Spaugh Zoo (May 27, 2017) (Ex. 5); *see also* Letter from Timothy J. Van Norman, Chief, Branch of Permits, DMA, FWS, to Scott Gregory, Great Bend-Brit Spaugh Zoo (Sept. 15, 2015) *Id.*

Here, as with numerous other applications for CBW permits that FWS has denied, Jordan’s application fails to demonstrate that he possesses the experience, staff, and facilities to operate a successful and humane conservation breeding program to enhance the propagation or survival of Arabian oryx, ring-tailed lemur, black and white ruffed lemur, brown lemur, Diana Monkey, and Lar gibbon. While Jordan’s application indicates that, as of December 31, 2016, NBJ only held an active inventory of 11 Lar gibbon and 19 ring-tailed lemurs, *see* App., Ex. 1 at 27, 29; *see also id.* at 23-25 (noting, as of December 31, 2016, an inventory of zero Arabian oryx, zero Diana Monkeys, and zero black and white ruffed lemurs, respectively.¹ The application does not include any inventory report for the brown lemur), Jordan’s insufficient responses to the application’s questions makes plain that he lacks the experience, staff, and facilities required to operate a conservation breeding program for *any* of the species for which he seeks a permit.

Specifically, Question 9 of the application seeks, “[f]or *each* requested species,” App., Ex. 1 at 6 (emphasis added), a description of Jordan’s “experience in maintaining and propagating the requested species or similar species.” *Id.* Jordan’s response, however, does not detail any of his experience in maintaining the Arabian oryx, ring-tailed lemur, black and white ruffed lemur, brown lemur, Diana Monkey, and Lar gibbon, as the question explicitly requires. Rather, in response to subpart a of Question 9, which seeks information on “[t]he number of years you or

¹ This fact alone should preclude Jordan from renewal for these species. *See* Ex. 6 at 1 (December 24, 2014 email from FWS to NBJ noting that NBJ “do not maintain several species” sought to be covered by their 2015 CBW permit renewal application, and that as a result, FWS “will be removing [those] species from your CBW authorization”); *see also* 50 C.F.R. § 13.26 (“When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office.”). Just as FWS warned Jordan in 2014 that it would not grant a CBW permit to cover species that Jordan did not currently have on hand, FWS should deny Jordan’s instant request for a CBW permit covering the Arabian oryx, black and white ruffed lemur, brown lemur, and Diana monkey because NBJ’s application indicates that it does not have any of these species on hand.

the facility has/have maintained the requested species or similar species,” Jordan simply states that “I have been doing this report since 1995.” *Id.* This response is wholly insufficient and fails to establish that Jordan possesses adequate experience and expertise to “successfully accomplish the objectives stated in the application.” 50 C.F.R. § 17.22(a)(2)(vi).

Subpart d of Question 9 also requires that applicants include “[a] brief resume for all senior animal care staff or personnel that will be working with or maintaining of each of the species requested.” App., Ex. 1 at 7. Jordan’s response to subpart d is simply: “Reed Gardner- Ranch foreman: Handles all feeding, darting and basically all the daily care of animals. He is very qualified.” *Id.* While brief in the extreme, this hardly constitutes a resume and is plainly insufficient to establish that Mr. Gardner possesses the skill, experience, and qualifications adequate to “enhance the propagation or survival of the affected wildlife.” 50 C.F.R. § 17.21(g)(3)(ii). Tellingly, this response is more-or-less a verbatim copy of the response Jordan used for a different ranch foreman in his 2015 CBW permit renewal application. *See* Captive Bred Wildlife Permit Renewal PRT-751619 (submitted Jul. 18, 2014) (Ex. 6) at 5 (response for Question 9, subpart d is: “OUR FOREMAN IS CRAIG BORCHARDT. HE HAS BEEN WITH THE PARK SINCE 2000. HE HANDLES ALL THE FEEDING, DARTING AND BASICALLY ALL THE DAILY CARE OF ANIMALS. HE IS VERY QUALIFIED.”).

Further, Jordan’s overall lack of adequate expertise, staff and facilities necessary to successfully breed and adequately maintain the animals sought to be covered by the application is evidenced by NBJ’s numerous AWA violations, most of them involving primates—the primary subject of this permit application.

NBJ has repeatedly been cited for failing to maintain its primate enclosures in violation of the AWA. *See* USDA APHIS Inspection Report No. 2016082568061767 (Jan. 10, 2017) (Ex. 7) (noting that an electric cord for a heater was “within reach of the gibbon pair with the infant” causing a danger of “severe injury or death if the animals reach the cord.”); USDA APHIS Inspection Report No. 118151538400027 (Apr. 28, 2015) (Ex. 8) (noting that cover for floor drain in squirrel monkey enclosure was broken and that the open drain pipe is exposed); USDA APHIS Inspection Report No. 156131546510801 (June 05, 2013) (Ex. 9) (in which inspectors found the metal roofing on gibbon shelter boxes to be torn, creating “sharp edges which may injure the animals” and that a male gibbon was being housed in an enclosure approximately 4 ft. x 4 ft. x 4 ft., below the AWA minimum space requirements for non-human primates of at least 25.1 sq ft. of floor space and at least 84 inches in height); USDA APHIS Inspection Report No. 197101347040995 (July 16, 2010) (Ex. 10) (in which inspectors found lemur shelter boxes to be “deteriorating” leaving exposed nail heads, and that the wooden wall dividing the small lemur cage was “badly weathered and warping”).

Additionally, NBJ has been repeatedly cited for failing to provide clean water and/or feeders to its animals. *See* USDA APHIS Inspection Report No. 2016082568207689 (Ex. 11) (Apr. 20, 2017) (noting that the feeder for the squirrel monkeys was “caked with old food and debris”); USDA APHIS Inspection Report No. 2016082567965278 (Oct. 18, 2016) (Ex. 12) (noting that feeders for squirrel and De Brazza’s monkeys had black debris on the sides. Most importantly, this inspection found a repeat violation for failure to provide clean, potable water to the non-human primates, noting that while the water “is somewhat cleaner than on the inspection in June

[2016]” it was still not clean as “[g]reen algae and a black substance are covering the sides of the water containers for all the non human primates at the facility.”); USDA APHIS Inspection Report No. 160161123430623 (June 07, 2016) (Ex. 13) (Water for lemurs, gibbons, and capuchins was “dark green” and that the containers “do not appear to have been cleaned in many days.”; Water for a pair of gibbons was “cream colored” and had dead flies floating in it, while a water container for the capuchin pair “has a black substance on the side of the container.” Similar watering problems were also noted for the fennec fox and giraffe on the premises.); USDA APHIS Inspection Report No. 174121737510708 (June 22, 2012) (Ex. 14) (noting that water receptacles for lemurs and squirrel monkeys had a “build up of algae in the water and on the sides of the containers.”).

Jordan’s overall lack of the necessary experience, staff, and facilities is perhaps most clearly demonstrated in USDA’s April 20, 2017 Inspection Report, where, in addition to the repeat violation for failure to maintain a clean feeder for the squirrel monkeys, USDA inspectors cited NBJ for failing to provide veterinary care to a female ring-tailed lemur for *over one month* after she had her right hand ripped off in a fight with cage mates. Ex. 11. Although the wound had left the lemur with “exposed tissue at the end of her forearm with possible bone exposed,” NBJ employees apparently thought it sufficient to simply provide the lemur with weekly antibiotics and to apply a topical antibiotic cream to the wound. *Id.*

Since Jordan’s application fails to adequately explain his experience in maintaining and propagating *each* of the species he seeks to cover under his renewed CBW permit, and since Jordan and his staff apparently cannot abide by the most basic AWA sanitary guidelines of ensuring that NBJ’s animals have clean, potable water and clean food containers—or adequately maintain the animals’ enclosures and seek obviously needed veterinary care following severe injuries—the FWS must deny Jordan’s application for renewal of his CBW permit for failure to demonstrate the “expertise, facilities [and] other resources...adequate to enhance the propagation or survival of the affected wildlife.” 50 C.F.R. § 17.21(g)(3)(ii).

B. Jordan Has Failed to Demonstrate—and Cannot Demonstrate—that His Proposed Activities Will Enhance the Propagation or Survival of the Arabian Oryx, Ring-Tailed Lemur, Black and White Ruffed Lemur, Brown Lemur, Diana Monkey, and Lar Gibbon in the Wild.

Section 10 of the ESA gives the FWS limited authority to issue permits to allow otherwise prohibited activities such as takes, transport, shipment, and sale *only “for scientific purposes or to enhance the propagation or survival of the affected species.”* 16 U.S.C. § 1539(a)(1)(a) (emphasis added); accord 50 C.F.R. § 17.21(g)(1)(ii). The FWS has repeatedly recognized that, to meet the Enhancement Requirement, one must “demonstrate how [its] proposed activities directly relate to the survival of th[e] species *in the wild.*” See Ex. 3.

Importantly, only those who can establish that the “*the principal purpose*” of their proposed activities “*is to facilitate conservation breeding*” can qualify for a CBW permit. FWS, Captive-bred Wildlife Registration Under the U.S. Endangered Species Act 2 (Jan. 2012) (Ex. 15) (emphases added). The “original intent” of the CBW registration was “the encouragement of responsible breeding that is *specifically designed to help conserve the species*

involved.” Captive-bred Wildlife Regulation, 63 Fed. Reg. 48634, 48635 (Sept. 11, 1998) (Ex. 16) (emphasis added). As defined by the ESA, the term “conservation” means “to use and the use of all methods and procedures which are *necessary* to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.” 16 U.S.C. § 1532(3) (emphasis added).

1. The Responses in Jordan’s Application Are Insufficient to Demonstrate That His Proposed Activities Will Enhance the Propagation or Survival of All Species at Issue in the Wild.

Here, Jordan has failed to demonstrate, and indeed is unable to demonstrate, that NBJ’s proposed activities will enhance the propagation or survival of the six species at issue in the wild. As noted *supra* in Part III.A, the Lar gibbon and ring-tailed lemur are the only species of animal that NBJ had in its inventory, of as of December 31, 2016, according to the application. *See* App., Ex. 1 at 20-29 (containing inventory reports for the covered species, except the brown lemur, and noting an inventory of 11 Lar gibbon and 19 ring-tailed lemurs as of December 31, 2016, and no members of the other species at issue in the permit application).

Principally, Jordan’s answer to Question 5 of the application, which requests a “*specific* description of how your proposed activities are going to facilitate captive breeding *for conservation purposes* of the species identified above, including your long-term goals and intended disposition of any progeny,” App., Ex. 1 at 5 (emphasis added), is wholly insufficient. Rather than provide a *specific* description of *how* his proposed activities will facilitate captive breeding *for conservation purposes* of all six species at issue, Jordan’s response is simply: “I am a Breeder/Broker.” *Id.* This response fails to provide *any* description, let alone a specific one, for *how* Jordan’s proposed activities will facilitate captive breeding *for conservation purposes* for the covered species.

Additionally, Jordan’s response fails to identify any long-term goals, or any goals for that matter, of his breeding program, and likewise fails to detail any “intended disposition of any progeny.” *Id.* Jordan’s total failure to provide any information concerning his intended disposition of any progeny is particularly troubling since Jordan’s response to Question 5 admits he is a “Broker,” indicating that he sells or otherwise transfers some of the animals under his control, and since the material in Jordan’s application demonstrate that he has made at least one sale or transfer of covered animals within the last three years.

Specifically, Jordan’s Annual Report for 2016, attached as a portion of Jordan’s responses to Question 9 subparts b and c, notes that Jordan sold a Lar gibbon to Omar Villarreal on April 29, 2016. App., Ex. 1 at 19 (2016 Birth/Death Chart for ring-tail lemur and Lar gibbon). This transaction is confirmed on NBJ’s “Inventory Item QuickReport,” submitted in response to Question 4 of the Application. *Id.* at 26 (noting a Lar Gibbon “Inventory Adjust” on 4/29/2016 with Mr. Villarreal’s name listed). Mr. Villarreal is a key player in the domestic exotic primate “pet” trade. Mr. Villarreal frequently advertises primates for sale online. *See* Screenshots of Search Results for “Omar Villarreal” and For Sale Listings Posted by Omar Villarreal on *Exoticanimalsforsale.net*, (Ex. 17). As of July 13, 2016, Mr. Villarreal held a total of 280 non-human primates. USDA APHIS Inspection Report No. 197161115060537 (Jul. 13, 2016) (Ex.

18). Mr. Villarreal has also been cited for violating the AWA, including for failure to provide adequate veterinary care to a captive primate under his care. *See People for the Ethical Treatment of Animals, Petition to Include the Captive Members of the Species of Primates Enumerated in 50 C.F.R. § 17.40(c) as Protected Members of their Respective Species Under the Endangered Species Act* 34 (Jan. 9, 2017), available at http://www.sciencemag.org/sites/default/files/PETA.FWS_Petition.macaques.ESA_March_2017.pdf (noting that on September 11, 2013, USDA inspectors cited Mr. Villarreal for denying adequate veterinary care to a Japanese macaque who “dropped to the ground and [laid] flat on the ground” during the inspection, and who had “apparently been in a fight with another animal and was suffering from ‘hair [loss] and numerous cuts and bite wounds around her back and rear end””).

Further, a sale of a Diana Monkey appears to have been made on March 25, 2015. *See App., Ex. 1* at 24 (“Inventory Item QuickReport” for Diana Monkey notes an “invoice” on 3/25/2015 to “Matt Hutzler.” No information concerning this potential sale is included in Jordan’s Annual Report attached as responses to Question 9, subparts b and c). This lack of accurate and up-to-date recordkeeping runs counter to FWS regulations. 50 C.F.R. § 17.21(g)(3)(iii) (“Each person so registered must maintain accurate written records of activities conducted under the registration and allow reasonable access to Service agents for inspection purposes as set forth in §§ 13.46 and 13.47 of this chapter. Each person so registered must also submit to the Director an individual written annual report of activities, including all births, deaths, *and transfers of any type.*” (emphasis added)); *see also* 50 C.F.R. § 13.46 (“From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exploration, or importation of...wildlife pursuant to such permit. Such records shall be kept current and shall include the names and address of persons with whom...wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate...and shall be maintained for five years from the date of expiration of the permit.”).

Jordan’s failure to provide a *specific* description, let alone any description, of *how* his proposed activities are going to facilitate captive breeding for *conservation purposes* of the covered species, and failure to describe his long-term goals and intended disposition of any progeny, despite a confirmed sale and/or transfer of a Lar gibbon in 2016, demonstrates to a T that the principal purpose of his proposed activities is *not* to facilitate conservation breeding of his covered species, but rather is to exhibit these animals and to profit from their sale in the domestic exotic animal trade industry. FWS’ regulations make clear that exhibition and other public education activities “may not be the sole basis to justify issuance of a [CBW] registration.” 50 C.F.R. § 17.21(g)(3); *see also* Captive-Bred Wildlife Regulation, 58 Fed. Reg. 68323, 68324 (Dec. 27, 1993) (in preamble to final CBW rule, the FWS noted that it has “*sincere doubts about the relative conservation benefits that are provided to non-native species in the wild from the public exhibition of living wildlife*” (emphasis added)).

2. Jordan Has Not Shown That He Can or Will Maintain the Genetic Vitality of Any of the Species at Issue.

Question 6 of the application requires applicants to provide “documentation showing how your captive population is being managed to maintain its genetic vitality.” App., Ex. 1 at 5, Question 6. Jordan’s application provides no such documentation, and merely cursorily responds that “I do not inbreed.” *Id.* at 6. Jordan’s response to Question 6 is fatally deficient because he does not mention or provide any documentation describing any activities that are key to scientifically maintaining genetic diversity, such as documenting the pedigree and demographic history of each individual species member; monitoring and documenting all birth, death, and transfer information; making breeding decisions to enhance genetic diversity; and developing a breeding and transfer plan. *See* Association of Zoos and Aquariums (AZA), Species Survival Plan Programs (Ex. 18) (listing these activities as central components of its program to maintain genetic diversity); AZA, Studbooks (Ex. 19) (same).

Finally, Question 6 requires that any applicant who does not “currently maintain [sufficient] specimens in each species request to maintain the genetic vitality of the species...*must* participate in an organized breeding program, such as Species Survival Plan,” and must “provide documentation describing the objectives and goals of the program.” App., Ex. 1 at 5-6, Question 6 (The application form used by Jordan appears to have omitted the word “sufficient” from the phrase “currently maintain sufficient specimens in each species request” in Question 6. The word “sufficient” is included in the updated version of the CBW permit application, *see* FWS Form 3-200-41, Question 11, <https://www.fws.gov/forms/3-200-41.pdf>). As noted *supra* in Part III.A, Jordan’s “Inventory Item QuickReport” entries indicate that, of the species ought to be covered by the renewed CBW permit, Jordan, as of December 31, 2016, only has an active inventory of 11 Lar gibbons and 19 ring-tailed lemurs. *See id.* at 20-29. Thus, Jordan is required to “participate in an organized breeding program, such as Species Survival Plan.” App., Ex. 1 at 5-6, Question 6. Just as FWS warned Jordan in 2014 that it would not grant a CBW permit to cover species that Jordan did not currently have on hand, FWS should deny Jordan’s instant request for a CBW permit covering the Arabian oryx, black and white ruffed lemur, brown lemur, and Diana monkey because NBJ’s application indicates that it does not have any of these species on hand. *See* Ex. 6 at 1 (containing a screenshot of a December 24, 2014 email from FWS to NBJ noting that NBJ “do not maintain several species” sought to be covered by their 2015 CBW permit renewal application, and that as a result, FWS “will be removing [those] species from your CBW authorization.”).

Yet, Jordan’s terse response to Question 6 provides no evidence that he participates in a Species Survival Plan (“SSP”) or other organized breeding program. *See* App., Ex. 1 at 6. If Jordan does participate in an SSP or other organized breeding program, his application fails to “indicate this and provide documentation describing the objectives and goals of the program.” *Id.* Likewise, Jordan’s response to Question 6 fails to meet the regulatory requirement to include in his application a statement of his “willingness to participate in a cooperative breeding program and to maintain or contribute data to a studybook.” 50 C.F.R. § 17.22(a)(1)(viii). Consequently, the FWS cannot issue a permit to Jordan for the species he seeks to cover with the CBW renewal application.

3. The “Principal Purpose” of the Proposed Activities Jordan Seeks to Authorize Through the Renewal of His CBW Permit is to Exhibit and Deal in Exotic Animals, Not to Facilitate Conservation Breeding.

Jordan’s application fails to demonstrate that his proposed activities will enhance the propagation or survival of the Arabian oryx, ring-tailed lemur, black and white ruffed lemur, brown lemur, Diana monkey, and Lar gibbon, and further fails to specifically demonstrate that his proposed activities will facilitate conservation breeding of these species. As noted *supra*, Jordan’s terse response to Question 5—“I am a Breeder/Broker”—is wholly insufficient and fails to provide any sort of “*specific description of how*” his proposed activities “are going to facilitate captive breeding *for conservation purposes*” of the identified species. App., Ex. 1 at 5 (emphases added).

The simple answer for why Jordan’s response to Question 5 is so sparse is because Jordan’s proposed activities are simply *not* for the facilitation of captive breeding for conservation purposes, but rather to exhibit the animals. The CBW regulations make clear that “[p]ublic education activities may not be the sole basis to justify issuance of a registration.” 50 C.F.R. § 17.21(g)(3). Given that it is Jordan’s burden to *demonstrate* that his proposed activities will facilitate conservation breeding, and that breeding the covered species for *display* and/or sale/transfer is the only activity Jordan appears interested in conducting, the FWS must deny his application for renewal of his CBW permit.

Indeed, in addition to Jordan’s facially deficient response to Question 5 and incomplete response to Question 6, Jordan also indicates that his activities do not “include the holding of surplus wildlife for an organized management program,” App., Ex. 1 at 6 (Question 7), and that he does not conduct research related to “maintaining and propagating the types of wildlife sought to be covered.” *Id.* (Question 7. Jordan’s response is simply “I do not conduct research.”).

Jordan’s responses in his application are stripped of all the trappings of a legitimate conservation breeding program because he does not run one. Indeed, as detailed *supra* in Part III.B.1, Jordan’s application demonstrates that he sells or otherwise transfers animals under his control to known exotic animal dealers—in some instances in violation of the ESA. The ESA makes it unlawful to “sell or offer for sale in interstate or foreign commerce any” protected species, 16 U.S.C. § 1538(a)(1)(F), and while Jordan’s CBW permit has authorized him to “deliver, receive, carry, transport or ship in interstate commerce, for the purpose of propagation or survival,” Ex. 1 at 3, it does *not* authorize selling endangered animals. *Compare* 16 U.S.C. § 1538(a)(1)(D) *with id.* § 1538 (a)(1)(F). Jordan’s connection to and participation in the domestic exotic animal trade is further confirmed through his submissions in his 2015 CBW permit application, *see* Ex. 6, which documents, *inter alia*, the June 17, 2012, unlawful sale of a Lar gibbon to Brights Farm, *id.* at 36. Jordan’s 2015 CBW permit application likewise details his extensive involvement in Texas’ intrastate exotic animal trade. *See generally id.* at 7-55.

In sum, because Jordan has failed to meet the heavy burden of demonstrating that his “primary purpose” in seeking renewal of his CBW permit for Arabian oryx, ring-tailed lemurs, black and white ruffed lemurs, brown lemurs, Diana monkeys, and Lar gibbon is “to facilitate conservation breeding,” Ex. 15, FWS, Captive-bred Wildlife Registration Under the U.S. Endangered Species

Act 2 (Jan. 2012), rather than to display and sell or otherwise transfer these species, his application for permit renewal must be denied.

C. FWS Cannot Renew Jordan’s CBW Permit Because the Application Fails to Disclose Material Information and Otherwise Contains Facially Insufficient Responses to Application Questions.

The FWS also cannot issue Jordan’s requested permit renewal because he has failed to submit a complete application as required by 50 C.F.R. § 13.11. The FWS “may not issue a permit for any activity . . . unless [an applicant] ha[s] filed an application under the following procedures,” *id.*, which include the requirement that “[a]pplications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3-200) or as otherwise specifically directed by the Service,” *id.* § 13.11(a). The agency may only issue a permit “[u]pon receipt of a properly executed application.” *Id.* § 13.21(b); *see also id.* § 13.11(e) (providing that the FWS will “consider [an] application abandoned” if it “receive[s] an incomplete or improperly executed application,” and the applicant “fail[s] to supply the correct information”).

As detailed *supra*, Jordan’s responses to a number of the questions in the application are facially incomplete, including, but not limited to:

- “Provide a current inventory, including those out on loan, of the ESA-listed species you are requesting to include in a CBW registration.” App., Ex. 1 at 5 (Question 4). Jordan’s attached inventory materials do not contain any inventory for the brown lemur. *See id.* at 20-29.
- “Provide a specific description of how your proposed activities are going to facilitate captive breeding for conservation purposes of the species identified above, including your long-term goals and intended disposition of any progeny.” *Id.* at 5 (Question 5). Jordan’s response is “I am a Breeder/Broker.” *Id.*
- “Provide documentation showing how your captive population is being managed to maintain its genetic vitality. If you do not currently maintain [sufficient] specimens in each species request to maintain the genetic vitality of the species, you must participate in an organized breeding program, such as Species Survival Plan. Please indicate this and provide documentation describing the objectives and goals of the program.” *Id.* at 5-6 (Question 6). Jordan’s response is simply “I do not inbreed”. *Id.* at 6.
- “For each requested species, provide a description of your experience in maintaining and propagating the requested species or similar species...” *Id.* at 6 (Question 9). Jordan provides no description of his experience in maintaining *any* of the species he seeks to cover with his CBW permit renewal, let alone *each* of them. *See id.*
- “How many mortalities of requested species or similar species, have occurred at your facility during the past five years? What were the causes? What measures have you taken to prevent future mortalities?” *Id.* (Question 9, subpart c). Jordan’s attached spreadsheets and inventories fail to fully explain the causes of death and wholly fail to identify the measures taken to prevent future mortalities. Specifically, Jordan’s attachments indicate eight Arabian oryx deaths between 2012 and 2016 (including 6 in 2013, during which one was killed by a male and five were killed by weather) and

1 ring-tailed lemur death between 2012 and 2016 (a four-day-old infant). *See id.* at 15. How five Arabian oryx were killed by weather in 2013 is not explained and neither is the 2016 death of the four-day-old ring-tailed lemur. *See id.* at 15, 18. No description of any measures taken to prevent future mortalities are provided.

- “A brief resume for all senior animal care staff or personnel that will be working with or maintaining of each species requested.” *Id.* at 7 (Question 9, subpart d). Jordan’s response is simply “Reed Gardner- Ranch foreman: Handles all feeding, darting and basically all the daily care of animals. He is very qualified.” *Id.* This is not a resume and fails to establish how, or whether, Mr. Gardner is qualified to care for Lar gibbons and ring-tailed lemurs.
- “Provide a detailed description, including size, construction materials, and protection from the elements, and photographs and detailed diagrams (no blueprints, please) clearly depicting your **existing** facilities where wildlife will be maintained.” *Id.* (Question 10). Jordan’s responses and attached photographs only describe and depict NBJ’s gibbon enclosures, and do not detail or describe the enclosures for the lemurs, Diana monkeys, or Arabian oryx. *See id.* at 8-14 (pages 8 through 10 are photos of Joe-Joe and Thomas’ enclosure; pages 11 and 12 are photos of Miranda’s enclosure; and pages 13 and 14 are photos of Bumble Bee and Stinger’s enclosure. Each of these animals are gibbons, *see id.* at 26).
- “Provide a copy of your license or registration, if any, under the Animal Welfare Act regulations of the U.S. Department of Agriculture (9 CFR 2) and/or any State license or registration you may have.” *Id.* at 7 (Question 11). While Jordan’s response notes that his AWA license is “Attached,” it is, in fact, not included in Jordan’s application materials. *See id.* at 1-33. Jordan’s failure to include a copy of NBJ’s AWA license is likely due to the fact that it was cancelled before Jordan filed the application on July 25, 2017. The USDA’s Animal Care Public Search Tool notes that the “Certificate Status” for NBJ’s most recent AWA certificate—Certificate No. 74-B-0571; Customer No. 3918—was “CANCELLED” as of July 3, 2017. *See Ex. 2.* Neither Jordan nor NBJ are included on USDA’s most recent list of active AWA licensees or registrants. *See* USDA, *List of Active Licensees and Registrants* (Apr. 2, 2018), https://www.aphis.usda.gov/animal_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf.

The FWS cannot issue a permit pursuant to the ESA if “[t]he applicant has failed to disclose material information required . . . in connection with [its] application.” 50 C.F.R. § 13.21(b)(2) (“Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit *unless* . . . [t]he applicant has failed to disclose material information required . . . in connection with his application.” (emphasis added)); *see also id.* § 17.22 (the FWS may only issue a § 10 permit “[u]pon receipt of a complete application”). Thus, Jordan’s failure to provide the required material information bars the FWS from renewing his CBW permit.

D. The FWS Cannot Renew Jordan’s CBW Permit Because He Has Failed to Make—and Cannot Make—the Required Showing of Responsibility.

50 C.F.R. § 13.21(b)(3) requires that applicants “demonstrate . . . a showing of responsibility” before they may be issued a permit. *Id.* Demonstrating a “showing of responsibility” means demonstrating that Jordan can meet the requirements of a CBW permit. *See OSG Prods. Tankers LLC v. United States*, 82 Fed. Cl. 570, 575 (Fed. Cl. 2008) (in making a responsibility determination in the context of government contracts, the “contracting officer must satisfy herself that that plaintiff can meet the requirements of the contract”).

In addition to the reasons detailed above, the FWS must deny Jordan’s request for renewal of his CBW permit because Jordan has not—and cannot—make the required showing of responsibility. As detailed above, Jordan fails to demonstrate that he has the expertise, experienced staff, and adequate facilities to manage and maintain a conservation breeding program for the covered species, and in particular for the Lar gibbon and Ring-tailed lemur. *See Part III.A, supra.*

Further, Jordan’s lacking of the requisite responsibility to properly care for his covered species is painfully obvious in his numerous AWA violations. *See Part III.A, supra.* The majority of these violations relate to failure to maintain clean, potable water and clean food containers for primates and failure to maintain the animal’s enclosures. *Id.* Any breeding program that is unable to adequately maintain its primate enclosures, *see* Exs. 7-10, and is unable to take the most basic sanitary steps to ensure that its animals have potable water and clean, non-algae and mold infested, water and food containers, *see* Exs. 11-14, has not made the required showing of responsibility.

Perhaps most shockingly, the April 20, 2017 USDA inspection of NBJ noted that a female ring-tailed lemur was “injured in a fight with cage mates *approximately one month ago* resulting in a severe injury to her right hand” in which her hand was torn off, leaving “exposed tissue at the end of her forearm with possible bone exposed.” Ex. 11(emphasis added). Rather than taking the lemur to a licensed veterinarian *for approximately one month after her hand had been torn off*, NBJ employees felt it was sufficient to simply provide the lemur with antibiotics and to apply topical antibiotic cream to the wound. *Id.* NBJ’s was also cited for failing to seek appropriate veterinary care on June 7, 2016. *Id.*

Finally, despite to Jordan’s contention to the contrary, his application does not contain a copy of his or NBJ’s AWA license, presumably because the NBJ’s license was cancelled on July 3, 2017, well before Jordan signed and certified that the application was “complete and accurate to the best of my knowledge and belief” on July 25, 2017. *See App., Ex. 1 at 1; see also Ex. 2* (screenshot of USDA Animal Care search tool depicting that the status of NBJ’s most recent AWA Certificate, No. 74-B-0571, was “CANCELLED” as of July 3, 2017).

FWS should determine whether Jordan and/or NBJ are engaging in AWA regulated activity without a valid license, and, if so, suspend Jordan’s current CBW license. *See* 50 C.F.R. § 13.27(a) (“The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, *or with any applicable laws or regulations governing the conduct of the permitted activity.*” (emphasis

added)). Since Jordan cannot legally engage in many of the activities covered by his current CBW permit, *see* App., Ex. 1 at 3 (Jordan’s current CBW permit authorizes him to “take for normal husbandry practices deliver, receive, carry, transport or ship in interstate commerce, for the purpose of enhancement of propagation or survival...” Arabian oryx, ring-tailed lemur, black and white ruffed lemur, brown lemur, Diana monkey, and Lar gibbon), without an AWA license, Jordan should have surrendered his CBW permit, rather than submit the instant application to have it renewed. *See* 50 C.F.R. § 13.26 (“When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office.”).

Jordan has thus clearly not made the required showing of responsibility. Consequently, the FWS has no lawful choice but to deny Jordan’s request for the renewal of his CBW permit.

E. FWS Cannot Lawfully Renew the Permit Because It Failed to Comply with Section 10(c) of the ESA.

Section 10(c) of the ESA mandates that “[i]nformation received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.” 16 U.S.C. § 1539(c). In *Gerber v. Norton*, 294 F.3d 173 (D.C. Cir. 2002), the U.S. Court of Appeals for the District of Columbia Circuit held that the FWS had violated § 10 of the ESA by failing to provide the plaintiffs with *everything* that was part of an ESA permit application. *Id.* at 180-82. FWS regulations make clear that for each CBW application, the FWS must publish notice of the application in the Federal Register, allow for a 30 day public comment period on the application, and must, “as a matter of public record at every stage of the proceeding,” include “the *original application*, materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.” 50 C.F.R. § 17.21(g)(3) (emphasis added). This “original application,” in the context of permit renewals, means the applicants’ *original* or *first* CBW permit application, and not simply their instant permit application. *See People for the Ethical Treatment of Animals v. United States Fish and Wildlife Service*, No. 1:11-cv-00809 (CMH/IDD) (Ex. 20) (Jan. 18, 2012 Consent Order) (at ¶1 – FWS agreeing that in Federal Register notices of receipt of applications for CBW registration, it will make “available to the public as a matter of public record at every stage of the proceeding” “information needed to assess the eligibility of the applicant such as *the original application materials, any intervening renewal applications documenting a change in location and/or personnel, and the most recent application report*”). FWS did not comply with this regulation or with the terms of this Consent Order in the instant application, as the only materials accompanying the Federal Register notice of Jordan’s instant application are his *current* application and accompanying materials, and not Jordan’s 2015 CBW permit renewal application and accompanying materials *or* his *original* CBW permit application, which is not publicly available. *See* Charles Jordan, d/b/a NBJ Zoological Park, LTD., PRT-751619, <https://www.regulations.gov/document?D=FWS-HQ-IA-2018-0001-0013> (simply containing a link to a PDF containing all the materials in Ex. 1).

F. Renewal of a Blanket Five-Year Permit Would Violate the ESA.

According to the Federal Register notice of Jordan’s CBW permit application, if granted the permit would “cover[] activities to be conducted by the applicant over a 5-year period.” Endangered Species; Receipt of Applications for Permit, 83 Fed. Reg. 12959, 12960 (Mar. 26, 2018). Issuing Jordan a five-year blanket permit to engage in activities that would otherwise require individual permits, and without public notice and an opportunity for comment on each of these activities, *see* 16 U.S.C. § 1539(c), would contravene the letter and the spirit of the ESA, which requires that permits be *specific* and narrowly tailored.

Congress intended for the ESA to prohibit “[v]irtually all dealings with endangered species, including taking, . . . except in *extremely narrow* circumstances.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978) (emphasis added). Accordingly, the ESA grants the FWS limited authority to authorize “any *act* otherwise prohibited by section 1538 of this title . . . to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(a) (emphasis added). The plain language of § 1539(a)(1)(a) (“any act”) contemplates a *single, identifiable* act of taking, delivering, receiving, carrying, transporting, or shipping—not any vague, unspecified series of activities involving captive-bred wildlife performed over several years. *See also* 50 C.F.R. § 13.42 (providing that ESA permits are “specific” and should “describe certain *circumscribed* transactions,” setting forth “*specific* times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out” (emphases added)). To broadly authorize Jordan to engage in innumerable unspecified otherwise prohibited activities with unspecified individual animals would directly contravene this language and would allow the exception to swallow the rule.

Issuing such a broad permit would also directly contravene the public’s right to information under § 10(c) of the ESA. Section 10(c) mandates:

The Secretary *shall* publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. *Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.*

16 U.S.C. § 1539(c) (emphases added); *see also Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 114-15 (D.D.C. 2009) (“Plaintiffs argue that the FWS violated subsection 10(c) of the ESA when it issued a blanket exception for *all* persons who breed the antelope species in captivity in the United States without any requirement for an application and case-by-case assessment of that application. They argue that the plain language of subsection 10(c) demands that permits be

issued on a case-by-case basis....The court concludes that the plaintiffs are correct and that the *text, context, purpose and legislative history of the statute make clear that Congress intended permits for the enhancement of propagation or survival of an endangered species to be issued only on a case-by-case basis following an application and public consideration of that application.*” (emphasis added)); *Cary v. Hall*, No. C05-4363 VRW, 2006 WL 6198320, at *11 (N.D. Cal. Sept. 30, 2006) (declining to dismiss for lack of subject matter jurisdiction plaintiff’s claims that “the ESA requires that the [Fish and Wildlife] Service consider whether to grant § 10 permits on a case-by-case basis and after the public has had an opportunity to participate”).

Additionally, it is unclear from Jordan’s application materials and from the accompanying federal register announcement what years the renewed permit would cover. *See App., Ex. 1* at 3 (noting that Jordan’s current CBW permit expires on June 5, 2020); 83 Fed. Reg. 12959, 12960 (Mar. 26, 2018) (noting only that Jordan’s permit renewal application seeks to “cover[] activities to be conducted by the applicant over a 5-year period”). Given that Jordan’s current CBW permit does not expire until June 5, 2020, it is unclear whether, should the FWS approve Jordan’s application despite the objections detailed herein, the renewed permit overlap with Jordan’s current permit, or whether it would take effect on or after June 5, 2020.

Bypassing the act-by-act assessment mandated by the ESA in favor of blanket permission to engage in any and all captive-breeding-related activities over a five-year span deprives the public, including PETA and its members, of information to which it would be entitled “as a matter of public record at every stage of the proceeding,” 16 U.S.C. § 1539(c), but for the FWS’s issuance of the blanket permit.

IV. Conclusion

For all of the reasons detailed above, PETA urges the FWS to deny Jordan’s application for the renewal of his CBW permit and to instead suspend the permit.

Again, should the agency decide to issue the permit despite these objections, PETA hereby requests notice of that decision, pursuant to 50 C.F.R. § 17.22(e)(2), at least ten days prior to the issuance of the permit via e-mail to DavidSc@petaf.org or telephone to 202-540-2190.