

## **Comments of People for the Ethical Treatment of Animals in Opposition to PRT-71654B**

People for the Ethical Treatment of Animals (PETA) submits the following comments urging the U.S. Fish and Wildlife Service (FWS) to deny Bhagavan Antle's request for a single-use permit to export and re-import eighteen endangered tigers into and back from Cancun, Quintana Roo, Mexico (PRT-71654B) (the "application") (Ex. 1). Antle is the founder and director of The Institute for Greatly Endangered and Rare Species (together, "T.I.G.E.R.S."). The FWS cannot lawfully approve the current permit request in light of T.I.G.E.R.S.'s failure to satisfy the eligibility requirements for such permits and to provide all required information.

Pursuant to 50 C.F.R. § 17.22(e)(2),<sup>1</sup> should the agency decide to issue the permit despite these objections, PETA hereby requests notice of that decision at least ten days prior to the issuance of the permit via e-mail to [AmandaSchwoerke@petaf.org](mailto:AmandaSchwoerke@petaf.org) or telephone to 203-815-5481.

### **I. Executive Summary**

T.I.G.E.R.'s current application is virtually identical to T.I.G.E.R.S.'s 2014 application seeking a permit to export tigers to Cancun for use in an action-adventure film (the "2004 application") (Ex. 2), which the FWS denied. T.I.G.E.R.S. has failed to correct the infirmities that caused the FWS to deny the 2014 application, including failing to provide a script for the proposed movie for which it seeks to export endangered tigers, and failing to provide sufficient information about the tigers' housing while they are in Mexico. The FWS is barred from lawfully issuing the requested permit to T.I.G.E.R.S. for the following reasons:

- T.I.G.E.R.S. has utterly failed to demonstrate that exporting and re-importing the endangered tigers to make a movie in Cancun—which has no script and for which T.I.G.E.R.S. has provided virtually no details about production or distribution—will enhance the propagation or survival of the species. Neither conservation education nor the organization's donation to purported tiger conservation justifies issuance of the requested permit.

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<sup>1</sup> "If the Service decides to issue a permit contrary to objections received pursuant to paragraph [(e)(1)] of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph [(e)(1)] of this section and inform that party of the issuance of the permit."

- T.I.G.E.R.S. has failed to provide a full statement of its proposed activities or its justification for the requested permit, as the regulations require.
- The U.S. Department of Agriculture (USDA) previously assessed Antle a civil penalty for violations of the Animal Welfare Act (AWA), which is related to the subject of the requested permit and shows a lack of responsibility.
- T.I.G.E.R.S. has failed to provide abundant required material information, including a script for the film and required information about the tigers' housing in Mexico.
- T.I.G.E.R.S.'s expertise and facilities are inadequate to enhance the propagation or survival of the species. Since 1988, the USDA has cited T.I.G.E.R.S. or Antle for *dozens* of AWA violations related to its inadequate facilities.
- T.I.G.E.R.S. illegally subjects tigers to inhumane and unhealthy conditions. In addition to citing the organization or its director dozens of times for AWA violations related to its inadequate facilities, the USDA has also cited T.I.G.E.R.S. and/or Antle more than two-dozen times for violations ranging from failure to provide veterinary care to sick and injured animals to failure to perform required tuberculosis tests on an elephant with direct public contact to failure to establish environmental enrichment plans for primates. Moreover, T.I.G.E.R.S. injures tiger cubs by prematurely separating them from their mothers.
- T.I.G.E.R.S. cannot make the required showing of responsibility because the organization and Antle have a long history of disregard for the conservation needs of tigers, for the law, and for administrative requirements. For example, the USDA has cited them more than two-dozen times for failure to maintain or provide required records, including veterinary records, enrichment plans for primates, exercise plans for dogs, acquisition and disposition records, and travel itineraries.

## **II. The Application**

On May 4, 2014, T.I.G.E.R.S. applied for a single-use permit to export and re-import eighteen endangered tigers into and back from Cancun, Quintana Roo, Mexico (PRT-36398B) for three years. The purported purpose of exporting the tigers was to film a movie “that depicts the causes of their endangerment” and “highlight[s] how [they] are being persecuted by illegal poaching for their majestic coats and mystical power, touching on how the uneducated eat and drink their body parts.” 2014 App. 8-9. The FWS denied this application by letter dated December 11, 2014. The agency explained:

Unfortunately, we cannot fully evaluate how your application meets the issuance criteria in accordance with 50 CFR 17.22(a)(2)(iv), because the supporting documentation does not provide critical information for our review. First, the information regarding the facility housing the tigers while in Mexico is substandard since it appears that the tigers will be housed only in their transportation units for this period. Secondly, since the primary purpose of the export is to transport the tigers to Mexico to shoot a movie regarding tiger's needs/threats, we need information such as script or screenplay to assess the relevance of this activity to tigers in the wild. Finally, the application stated that a Dr. Sheri Duncan would travel with the tigers to Mexico, but does not provide any information on the experience or credentials of this person on travel with the tigers.

Letter from Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority (DMA), FWS, to T.I.G.E.R.S. 1-2 (Dec. 11, 2014) (Ex. 3).

On July 2, 2015, T.I.G.E.R.S. again applied for a single-use permit to export and re-import eighteen endangered tigers into and back from Cancun, Quintana Roo, Mexico (PRT-71654B) for three years, purportedly for use in the same action-adventure film. Notice of the application was published in the Federal Register on September 30, 2015, commencing a comment period ending October 30, 2015. Endangered Species; Receipt of Applications for Permit, 80 Fed. Reg. 58768, 58769 (Sept. 30, 2015).

### **III. 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 endangered species; carrying, transporting, or shipping them in interstate or foreign commerce in the course of a commercial activity; and importing or exporting them. *Id.* § 1538(a) & (f).

Section 10 of the ESA gives the FWS limited authority to issue permits to allow otherwise prohibited activities *only* “for scientific purposes or to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(a) (the “Enhancement Requirement”); *accord* 50 C.F.R. § 17.22. This section was intended “to *limit substantially* the number of exemptions that may be granted under the Act, . . . *given that these exemptions apply to species which are in danger of extinction.*” H.R. Report 93-412, at 156 (1973) (Ex. 4) (emphases

added). Such was Congress’s desire to limit exemptions that it prohibited “[v]irtually all dealings with endangered species . . . except in *extremely narrow* circumstances.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978) (emphasis added).

Persons who seek to engage in any of the otherwise prohibited activities must apply for, and obtain, a permit pursuant to § 10. A permit may only be issued if the applicant discloses all “material information required . . . in connection with [its] application.” 50 C.F.R. § 13.21(b)(2). “Information 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); *see also Gerber v. Norton*, 294 F. 3d 173, 180-82 (D.C. Cir. 2002) (holding that the FWS violated § 10(c) of the ESA by failing to make publicly available a map of a mitigation site location submitted as part of a permit application). Moreover, the FWS may only issue a permit after making specific findings that: “(1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.” 16 U.S.C. § 1539(d). In addition, the FWS may only issue a permit if it has determined, based on “the best scientific and commercial data available,” that such issuance “is not likely to jeopardize the continued existence of any endangered species.” *Id.* § 1536(a)(2).

#### **IV. The FWS Cannot Lawfully Issue the Requested Permit to T.I.G.E.R.S.**

##### **A. T.I.G.E.R.S.’s Proposed Activities Will Not Enhance the Propagation or Survival of Endangered Asian Elephants.**

The FWS cannot exempt T.I.G.E.R.S. from § 9’s prohibitions unless the organization shows that importing and exporting these tigers to film a movie in Cancun will “enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1). The FWS has recognized that to qualify for the second of these exceptions (“enhancement”) one must “demonstrate how your proposed activities directly relate to the survival of this species *in the wild*.” Fax from Anna Barry, Senior Biologist, DMA, FWS, to John F. Cuneo, Jr., Hawthorn Corp. (Mar. 12, 2012) (Ex. 5) (emphasis added). T.I.G.E.R.S. has not—and cannot—satisfy this fundamental requirement.

**1. T.I.G.E.R.S. has failed to demonstrate that its proposed “action and travel adventure” film will enhance the propagation or survival of endangered tigers.**

The applicant—not the FWS or private commenters—bears the burden of demonstrating whether it qualifies for the exception. *See* 50 C.F.R. § 13.21(b) (“fail[ure] to demonstrate a valid justification for the permit” warrants denial); *see also, e.g.*, Fax from Anna Barry to John F. Cuneo, Jr. (Oct. 14, 2011) (Ex. 6) (“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)). If the FWS cannot tell whether the proposed activity satisfies the statutory goal, it cannot issue the requested permit. T.I.G.E.R.S. has not met this burden.

The organization requests the permit to export the tigers to Cancun to film an “action and travel adventure story,” 2014 App. 17, that involves children shipwrecked on an island—“similar to Gilli[g]an’s island”—“us[ing] their creativity and ingenuity to band together to fight [poachers] off in a ‘Home Alone’ meets ‘Swiss family Robinson’ [sic] theme,” App. 8. The child actors’ “actions and dialogue” will purportedly “reinforce[] . . . the importance of protecting and preserving endangered species such as tigers,” as well as “address[ing] and dispel[ling] mis information [sic] about the use of the animals for medicine, magic or other illicit or unlawful uses.” *Id.* This is the only description of the movie provided in the entire application. T.I.G.E.R.S. does not provide a script, *id.*, or even “the name of the production company or those on the production team,” *id.* at 1.

Without a script, the FWS cannot know whether the movie would have any educational value, or whether it would in fact *misinform* the public about tiger conservation. *Id.* **Indeed, this is precisely the reason that the FWS denied T.I.G.E.R.S.’ virtually identical 2014 application.** *See* Letter from Timothy J. Van Norman to T.I.G.E.R.S. 2 (Dec. 11, 2014) (“[S]ince the primary purpose of the export is to transport the tigers to Mexico to shoot a movie regarding tiger’s needs/threats, we need information such as script or screenplay to assess the relevance of this activity to tigers in the wild.”). And the FWS continues to acknowledge that, without the script, it cannot find that the movie will enhance the propagation or survival of endangered tigers, warning T.I.G.E.R.S. that, “if a permit was to be issued, a condition would be placed on the permit that the movie must provide[]/promote[] a conservation theme that benefit[s] the survival of tigers in the wild,” and that T.I.G.E.R.S. would be in violation of the

permit “[i]f it [were] found that the movie does not discuss[] the ecological role and conservation needs of the tiger.” App. 41.

This is of particular concern given T.I.G.E.R.S.’s history of peddling in misleading information about endangered tigers. The film, for which the facility seeks permission to export the big cats, will purportedly “highlight how tigers are being persecuted by illegal poaching for their majestic coats and mystical power, touching on how the uneducated eat and drink their body parts. 2014 App. 8-9. But such “uneducated” beliefs are parroted on T.I.G.E.R.S.’s blog, which states that “the white tiger symbolizes” the “divine power to ward off evil, punish the evil and praise the good, bring wealth and good match for marriage etc.” T.I.G.E.R.S.—The White Tiger, <https://myrtlebeachsafari.wordpress.com/> (Aug. 21, 2015) (Ex. 7).

Antle recently commented in response to a *Rolling Stone* article about T.I.G.E.R.S. that “Royal white Golden tabby and snow tigers are unique examples of natural diversity that exist within the tiger coat pattern,” whom “are vitally important to saving this highly endangered species” and “may hold the keys to the [species’] survival.” Ian S. Port, *The Man Who Made Animal Friends*, *Rolling Stone*, Sept. 21, 2015 (Ex. 8), <http://www.rollingstone.com/culture/news/the-man-who-made-animal-friends-20150921?page=11>.<sup>2</sup> On the contrary, the FWS has emphasized that “white tigers are hybrids and should not be bred;” “generic tigers . . . are not suitable for species conservation;” and “hybridization of listed species i[s] prohibited under . . . the . . . ESA.” Email from Michael Carpenter, Senior Biologist, DMA, FWS, to Nick Sculac, Serenity Springs Wildlife Center (May 6, 2013) (Ex. 11); *see also* U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 52297, 52299 (Aug. 22, 2011) (“We do not believe that breeding inter-subspecific

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<sup>2</sup> Such claims are pervasive throughout T.I.G.E.R.S.’s marketing. For example, T.I.G.E.R.S.’s website touts its ownership of the so-called “Royal White Bengal tiger,” which “ha[s] been displayed in only a few locations around the world.” *Tigers, The Animals*, <http://www.tigerfriends.com/tigers.html> (last visited Oct. 30, 2015) (Ex. 9). Although the organization acknowledges that “the Royal White tiger is not a separate species of tiger,” it suggests that white tigers have special value requiring conservation through the “Royal White Bengal” name and statements like “it is “a unique color that enabled the[se tigers] to exist in the snow covered Himalayas for thousands of years.” *Id.* T.I.G.E.R.S.’s website similarly suggests that the “Golden Tabby tiger”—“one of the world’s rarest big cats”—is a separate species of tiger requiring conservation. *Id.* The organization boasts that “[t]his type of tiger became extinct in the wild in 1932,” but that “[f]rom work done by us at [T.I.G.E.R.S.] and our breeding partner Dr. Jossip Marcan we have brought back from the very edge of extinction the Golden Tabby Tiger.” *Id.* T.I.G.E.R.S. is “very proud to say that since the first birth in 1987 that their [sic] are now more than 30 Golden Tabby tigers in existence today.” Again, however, “golden tabby tigers are merely a product of th[e] practice of inbreeding for white coats . . . and are not being bred for any sort of conservation program either.” *Big Cat Rescue, Issues: White Tigers*, <http://bigcatrescue.org/abuse-issues/issues/white-tigers/> (last visited Oct. 26, 2015) (Ex. 10).

crossed or generic tigers provides a conservation benefit for the long-term survival of the species. Inter-subspecific tiger crosses and animals of unknown subspecies cannot be used for maintaining genetic viability and distinctness of specific tiger subspecies. Generic tigers are of unknown genetic origin and are typically not maintained in a manner to ensure that inbreeding or other inappropriate matings of animals do not occur.”). There is no population of white tigers in the wild, nor has there ever been because white tigers are color morphs of orange tigers who represent a genetic aberration. Most, if not all, white tigers in this country are of mixed heritage, and all are highly inbred. Philip J. Nyhus et al., *Thirteen Thousand and Counting: How Growing Captive Tiger Populations Threatens Wild Tigers*, in *Tigers of the World: The Science, Politics and Conservation of Panthera Tigris* 223, 234 (Philip J. Nyhus & Ronald Tilson eds., 2nd ed. 2010) (Ex. 12). Indeed, according to Nyhus et al.,

[A white tiger’s] value to conservation is zero and they are hampering efforts to educate the public about true challenges of conserving the world’s wild tigers . . . . One logical outcome of the popularity of white tigers is a warped perspective and awareness of what a tiger is and the true threats faced by wild tigers.

*Id.* at 234, 235. The Association of Zoos and Aquariums (AZA) acknowledges the lack of conservation value of breeding or exhibiting white tigers by excluding white tigers from the Species Survival Program (SSP), explaining that “the SSP is based upon maximizing genetic diversity, [and thus] selective breeding of an extremely rare allele for white coloration is not appropriate.” AZA, Tiger SSP Factsheet (Ex. 13).

In light of T.I.G.E.R.S.’s history of misleading the public about tiger conservation, the FWS cannot possibly conclude that the proposed movie will “enhance the propagation or survival of the affected species” without at the very least reviewing a script first. Moreover, the application states only that the proposed film will be “an English language film production for distribution in the U.S.,” “targeted to a young audience.” App. 8. The FWS has no way of evaluating whether this cross between “Home Alone,” “Gilligan’s Island,” and “The Swiss Family Robinson,” enhances tigers’ propagation or survival without more information on when, how, to whom, and to how many the film will be shown.

Because T.I.G.E.R.S., which alone bears the burden of demonstrating that its activities will directly benefit the survival of species in the wild, has failed to carry its burden, the FWS

must deny the organization's permit application. Again, the FWS has warned T.I.G.E.R.S. that, "if a permit was to be issued, a condition would be placed on the permit that the movie must provide[]/promote[] a conservation theme that benefit[s] the survival of tigers in the wild," and that T.I.G.E.R.S. would be in violation of the permit "[i]f it [were] found that the movie does not discuss[] the ecological role and conservation needs of the tiger." *Id.* at 41. However, if the FWS finds that T.I.G.E.R.S. has not yet met its burden of demonstrating that its proposed activity—exporting the tigers to Mexico for use in a movie—will enhance the survival of the eighteen tigers, the agency has no choice but to deny the permit. Although § 10 authorizes the agency to impose "terms and conditions" on permitted activities, it limits the activities that may be permitted to those that "enhance the propagation or survival of the affected species." 16 U.S.C. § 1539(a)(1)(A). Likewise, the FWS regulations mandate that the FWS may only issue a requested permit if the applicant "demonstrate[s] a valid justification for the permit." 50 C.F.R. § 13.21(b)(3). The agency does not have the discretion to issue the permit conditional upon T.I.G.E.R.S. *later* demonstrating that it has met the Enhancement Requirement. Therefore, because T.I.G.E.R.S. has not met its burden, the FWS must deny the permit.

**2. Issuing the requested permit to T.I.G.E.R.S. solely on the basis of an "educational" movie would violate established FWS policy.**

Even if T.I.G.E.R.S. succeeded in demonstrating that this proposed cross between "Gilligan's Island," "Home Alone," and "The Swiss Family Robinson" would be educational, issuing T.I.G.E.R.S. the requested permit solely on the basis of its purported educational activities would violate established agency policy. It is the clear policy of the FWS that "[p]ublic education activities may not be the sole basis to justify issuance" of an exemption from § 9. *Id.* § 17.21(g)(3). When the agency amended the captive-bred-wildlife-registration regulations ("CBW regulations") to codify this policy in 1993, it voiced concern that, in the absence of such limitation, "captive-bred animals . . . might be used for purposes that do not contribute to conservation." Captive-Bred Wildlife Regulation, 57 Fed. Reg. 548-01, 550 (Jan. 7, 1992) (emphasis added).

The agency has also advised applicants for other types of § 10 permits that "[e]ducation **alone** can no longer suffice for meeting the requirements under the ESA." Email from Anna Barry to Harriett, TZ Productions (Jan. 6, 2014) (Ex. 14) (second emphasis in original); *see also*, *e.g.*, Fax from Anna Barry to John F. Cuneo, Jr. (Mar. 12, 2012) ("Conservation Education alone



can no longer suffice for meeting the enhancement requirements under the Endangered Species Act. 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.”); E-mail from Anna Barry to Anton and Ferdinand Fercos-Hantig (Feb. 8, 2012) (Ex. 15) (noting, in context of exhibitor’s application to export/re-import endangered tigers, that “Conservation Education alone” does not “suffice for meeting the requirements under the Endangered Species Act (ESA), you need to be able to demonstrate how your proposed activities directly relate[] to the survival of this species in the wild,” and explaining that this requirement is “being enforced to ensure applications submitted by exhibitors are meeting the same requirements as other applica[nts] that are seeking an ESA permit”).

The FWS’s policy is consistent with the ESA’s policy of “institutionalized caution.” *Tenn. Valley Auth.*, 437 U.S. at 194. Issuing a § 10 permit based solely on using endangered species in a movie—on the unlikely chance that viewers will come away newly committed to conservation—is the kind of shot-in-the-dark approach to species-preservation that the ESA forbids.

**3. There is no evidence that T.I.G.E.R.S. will devote more money to tiger conservation if the FWS issues the requested permit.**

The application also claims that T.I.G.E.R.S. made a 2015 donation of \$10,000, as well as pledging \$2,000 annually, through its non-profit arm, The Rare Species Fund, to The Corbett Foundation to support the Mobile Wildlife Rescue Unit being set up at the outskirts of Kaziranga Tiger Reserve in Assam, India. App. 23-24, 45.

Even were it lawful to issue permits in exchange for donations to unconnected conservation projects—which it is not, T.I.G.E.R.S. has utterly failed to demonstrate that more money will be devoted to the conservation of tigers in the wild if the FWS issues the facility the requested permit. The application does not claim, for example, that any percentage of the revenues earned from using the tigers in the proposed film will be spent on tiger conservation. In fact, the opposite is true: Since T.I.G.E.R.S. has already pledged an annual donation to The Corbett Foundation through 2018—regardless of whether the facility exports the tigers to Cancun, *id.* at 9, the issuance of the requested permit will have absolutely no impact on the foundation’s conservation efforts. Indeed, The Corbett Foundation was unaffected when the FWS rejected virtually the same application in 2014. Therefore, the FWS cannot issue the

requested permit even under its Pay-to-Play policy, discussed below, given that there is no connection between the proposed activity—exporting tigers to Cancun for use in an action-adventure movie—and T.I.G.E.R.S.’ donations.

**4. The FWS can’t issue the requested permit on the basis of its illegal Pay-to-Play policy.**

T.I.G.E.R.S. relies on its purported “long history of working with and financially supporting conservation efforts” to satisfy the Enhancement Requirement. *Id.* at 9 (discussing the facility’s donations to conservation efforts in response to the question “what activities will you be conducting to demonstrate that your proposed activity ‘enhances’ the survival of the species or meets the issuance criteria under the ESA”).

The FWS’s “Pay-to-Pay” policy allows permit holders to conduct activities prohibited by the ESA for purely commercial purposes that do not themselves enhance the propagation or survival of the species in exchange for *de minimis* contributions to the conservation of the affected species generally. The agency has advised § 10 permit applicants that that can meet the Enhancement Requirement by donating money to “in situ conservation work in the species’ range states,” and has provided information on how to document applicants’ donations, as well as of examples of donations for this purpose. Email from Anna Barry to Harriet (Jan. 6, 2014); Fax from Anna Barry to John F. Cuneo, Jr. (Mar. 12, 2012) (“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. Many of our applicants achieve this goal by donating to a well-established conservation program in the range state.”); Fax from Anna Barry to John F. Cuneo, Jr. (Oct. 19, 2011) (Ex. 16) (offering “[c]ontribut[ing] money to an organization that participates in in-situ work in the range state for tigers” as “[a]n [e]xample of an activity applicants participate in to show enhancement”); Fax from Anna Barry to John F. Cuneo, Jr. (Oct. 14, 2011) (recommending that Hawthorn meet the Enhancement Requirement by “undertak[ing] activities that will benefit the survival of the tigers in the wild,” such as “[p]articipati[ng] [in] in situ conservation work in the species range states”).

However, in addition to T.I.G.E.R.S.’s failure to demonstrate any connection between its proposed activity—exporting tigers to Cancun for use in a movie—and its donations to the Corbett Foundation, *see* § III.A.3, *supra*, the FWS cannot rely on its Pay-to-Play policy in issuing the requested permit because the policy is contrary to the plain language of the ESA and

the FWS regulations; is inconsistent with the statutory and regulatory scheme as well as the purpose of the ESA, and flies in the face of the legislative history.

Section 10(a)(1)(A) of the ESA provides that the FWS may permit “any act otherwise prohibited by Section 1538 [§ 9] . . . to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(A). Likewise, the FWS regulations governing enhancement permits provide that “the Director may issue a permit authorizing activity otherwise prohibited by § 17.21 . . . for enhancing the propagation or survival . . . of endangered wildlife.” 50 C.F.R. § 17.22. On the face of these provisions, an applicant only qualifies for an exemption if it demonstrates that activities *that would otherwise be prohibited by § 9 of the ESA*—e.g., exporting, importing, harming, harassing, or wounding an endangered animal—will likely enhance the propagation or survival of the species. The conservation benefit must directly stem from the proposed use of the endangered animals. It is irrelevant whether the applicant conducts collateral activities not otherwise prohibited by § 9 that enhance the species’ survival—such as giving money to unrelated conservation efforts.

Senator John Tunney of California, who proposed the Enhancement Requirement, stated that the requirement “would permit otherwise prohibited acts when *they* are undertaken to enhance the propagation or survival of the affected species.” Cong. Research Serv., 97th Cong., Legislative History of the Endangered Species Act of 1973, as Amended in 1976, 1977, 1978, and 1980, at 358 (Comm. Print 1982) (Ex. 17) (Sen. Tunney) (emphasis added). He explained that “[t]his is a needed management tool recommended by all wildlife biologists, . . . for example, where a species is destroying its habitat or where the species is diseased.” *Id.* at 396. But the Pay-to-Play policy allows otherwise prohibited acts undertaken for *any* reason, so long as permit applicants pay for the privilege with a donation to conservation.

Issuing an ESA permit to anybody who will donate money to a conservation organization is also inconsistent with Congress’ goal of substantially limiting the number of exemptions granted under § 10—and allows the exception to swallow the rule. *See* H.R. Rep. No. 93-412, at 156 (1973) (safeguards in § 10 were intended “to *limit substantially* the number of exemptions that may be granted under the Act, . . . *given that these exemptions apply to species which are in danger of extinction*” (emphases added)). Such was Congress’s desire to limit exemptions that it prohibited “[v]irtually all dealings with endangered species, . . . except in *extremely narrow* circumstances.” *Tenn. Valley Auth.*, 437 U.S. at 180 (emphasis added). Permitting any company

willing to pay a negligible fraction of its profits to exploit endangered species stretches § 10's "extremely narrow" exemption beyond its breaking point.

It also conflicts with the general purposes and policies underlying the ESA. The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Babbitt v. Sweet Water Home Chapter of Cmty. for a Greater Or.*, 515 U.S. 687, 698 (1995). The Act "encompasses a vast range of economic . . . enterprises and endeavors." *Id.* at 708. "[L]iterally every section of the statute" reflects the "plain intent of Congress . . . to halt and reverse the trend toward species extinction, whatever the cost." *Tenn. Valley Auth.*, 437 U.S. at 184; *see, e.g.*, S. Rep. No. 93-307, at 306 (1973) (Ex. 18) (noting that the Act defines "take" "in the broadest possible manner to include every conceivable way in which a person can 'take' or attempt to 'take' any fish or wildlife"); H.R. Rep. No. 93-412, at 154 (1973) (stating that the ESA uses the "broadest possible terms" to define restrictions on takings). Therefore, the Supreme Court has "expansively interpret[ed] ESA [prohibitions] in light of the statute's 'broad purpose' of saving species from extinction." *United States v. Snapp*, 423 F. App'x 706, 708 (9th Cir. 2011) (citing *Babbitt*); *see also Aransas Project v. Shaw*, 835 F. Supp. 2d 251, 270-71 (S.D. Tex. 2011) ("[A] broad interpretation of ESA Section 9" is "in harmony with the ESA's purpose [and] legislative history."). Defendants' permissive Pay-to-Play policy is utterly inconsistent with the "broad scope [of the ESA's] prohibitions." H.R. Rep. No. 94-823, at 542 (1976) (Ex. 19).

This reading of § 10(a)(1)(A) finds further support in the FWS regulations. Pursuant to § 17.21 of the FWS, the Director may only issue a captive-bred wildlife permit to "export or re-import" endangered wildlife bred in captivity in the United States if "[t]he purpose of such activity is to enhance the propagation or survival of the affected species." 50 C.F.R. § 17.21(g) (emphasis added). Furthermore, § 17.22 of the regulations, which governs enhancement permits generally, requires that applicants provide "[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) (emphases added). If donating money to a conservation organization can justify issuance of a § 10 permit, there is no reason why the FWS should require applicants to detail the "activities sought to be authorized by the permit" to show why they are "justified in obtaining [the] permit." Under the FWS's Pay-to-Play scheme, the "justification" for the permit—the donation—is wholly independent of the "activities sought to be authorized

by the permit”—such as importing and exporting endangered tigers. Likewise, in issuing a § 10 permit, § 17.22 mandates that the Director consider “[w]hether *the purpose for which the permit is required* is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit.” *Id.* § 17.22(a)(2)(i) (emphases added). But, again, if making a small donation for conservation “is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit,” “the purpose for which the permit is required” should be irrelevant. Clearly, the FWS’s Pay-to-Play policy is inconsistent with the requirements of 50 C.F.R. § 17.22.

The Pay-to-Play policy also conflicts with the regulations of the National Marine Fisheries Service (NMFS), which shares responsibility with the FWS for administering the ESA. To obtain a § 10 enhancement permit, the NMFS regulations require an applicant to demonstrate that “[*t*he proposed activity furthers a bona fide . . . enhancement purpose.” *Id.* § 216.41(b)(1) (emphasis added); *see also* NMFS, Application Instructions for a Permit for Scientific Purposes or to Enhance the Propagation or Survival of Threatened and Endangered Species 1 (Exp. Aug. 31, 2015) (Ex. 20) (“*Permitted activities* must . . . enhance the propagation or survival of the listed species.” (emphasis added)). An applicant must also demonstrate that “*the activity will likely contribute significantly* to maintaining or increasing distribution or abundance, enhancing the health or welfare of the species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.” *Id.* § 216.41(b)(6)(ii) (emphasis added). “Only” endangered wildlife “necessary for enhancement of the survival, recovery, or propagation of the affected stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit.” *Id.* § 216.41(b)(6)(i); *see also id.* § 216.33(c)(2) (requiring that “the proposed activity” be “for enhancement purposes”). The regulations do not authorize permit holders to import and export endangered wildlife for purposes wholly unconnected to enhancement and survival, so long as they make a small donation to a conservation project. Rather, unlike Defendants’ Pay-to-Play policy, the NMFS regulations are faithful to the plain meaning of the Enhancement Requirement: that permit applicants must establish a direct relationship between the activities for which the permit is sought and the survival of endangered species in the wild.

Finally, the FWS has long interpreted the Enhancement Requirement to require that “the *purpose of*” the otherwise prohibited activity—and not of a collateral activity, such as donating

to conservation—be “enhancing propagation or survival of the affected species.” Captive Wildlife Regulation, 44 Fed. Reg. 54002, 54002 (Sept. 17, 1979) (emphasis added) (stating that, under the ESA, “persons may be permitted to undertake otherwise prohibited activities for the purpose of enhancing propagation or survival of the affected species”); *see also id.* at 54005 (explaining that the rule pertaining to § 10 exemptions for captive-bred wildlife “is intended to facilitate activities *for the purpose* of enhancing propagation or survival of the affected species” (emphasis added)). As far back as 1979, the agency explained that “permission may be granted for [otherwise prohibited] activities *if they are conducted for certain purposes*. In the case of endangered wildlife, the Act limits them to scientific purposes or to purposes of enhancing the propagation or survival of the affected species.” *Id.* (emphasis added); *see also id.* at 54005 (“Only those activities *conducted to enhance propagation or survival of the affected species* may be authorized by the present rule.” (emphasis added)). Based on its longstanding interpretation, the FWS cannot issue T.I.G.E.R.S. the requested permit unless it shows that the purpose of exporting and re-importing the tigers—and not of making the noted donation to The Corbett Foundation—is to enhance the survival and propagation of the species.

It is black letter law that “an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.” *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). The FWS failed “to supply a reasoned analysis” for the abandonment of its policy that the purpose of *the proposed activity* must be to enhance the propagation or survival of the species. This failure provides an independent reason why the FWS cannot rely on the Pay-to-Play policy as a basis for issuing T.I.G.E.R.S. the requested permit.

For these reasons, the FWS cannot rely on its unlawful Pay-to-Play policy in deciding whether to issue the requested ESA permit to T.I.G.E.R.S.

**B. T.I.G.E.R.S. Has Failed to Provide a Full Statement of Its Proposed Activities or of Its Justification for the Requested Permit, as the Regulations Require.**

The regulations require applicants for a § 10 permit to provide “[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.” 50 C.F.R. § 17.22(a)(1)(vii). T.I.G.E.R.S. provides

*virtually no* “details” about its proposed activities (exporting and re-importing endangered tigers to make a cross between “Gilligan’s Island,” “Home Alone,” and “The Swiss Family Robinson,” App. 8), including a script of the movie; the production company responsible for the movie; the genre of the movie; how the tigers will be trained and handled for the movie; when the movie will be distributed and presented; where the movie will be distributed and presented; how the movie will be distributed and presented; and to how many people the movie will be distributed and presented. T.I.G.E.R.S. cannot satisfy the requirement to “includ[e] the details of the activities sought to be authorized by the permit” without this fundamental information.

Moreover, T.I.G.E.R.S. makes no effort to explain how importing endangered tigers to Cancun to make a cross between “Gilligan’s Island,” “Home Alone,” and “The Swiss Family Robinson,” will meet the Enhancement Requirement—the “reason[] why the applicant is” purportedly “justified in obtaining a permit.” Baldly asserting that parents and children alike will “be impacted by the conservation and preservation messaging,” App. 8, hardly qualifies as the “full statement” of how the movie will “directly relate to the survival of this species *in the wild*,” Fax from Anna Barry to John F. Cuneo, Jr. (Mar. 12, 2012) (emphasis added), that the regulations require. 50 C.F.R. § 17.22(a)(1)(vii).

Because T.I.G.E.R.S. has utterly failed to comply with 50 C.F.R. § 17.22(a)(1)(vii), the FWS must deny the application.

### **C. T.I.G.E.R.S.’s Application Is Barred by Its Civil Penalty for AWA Violations.**

The FWS must also reject the application because T.I.G.E.R.S. “has been assessed a civil penalty” and “convicted of a[] criminal provision of [a] statute or regulation,” relating to its proposed activities, which “evidences a lack of responsibility.” 50 C.F.R. § 13.21(b)(1). On October 22, 1991, Antle was ordered to pay a \$3,500 civil penalty to the USDA for willfully violating the AWA by failing to maintain housing facilities in good repair; failing to maintain structurally sound housing facilities; failing to protect food and bedding from contamination and infestation; failing to provide adequate drainage; failing to adequately clean and sanitize animals’ primary enclosures; failing to keep the premises clean and in good repair; failing to maintain acquisition and disposition records for the animals; and exhibiting animals without a license. Consent Decision and Order, *In re Bhagavan Kevin Antle*, AWA Docket No. 91-67 (USDA Oct. 22, 1991) (Ex. 21). The USDA was forced to send a letter to Antle on March 25, 1992,

demanding payment of the \$3,500 civil penalty because the check that Antle had sent had already been rejected twice by the bank due to insufficient funds. Letter from Phil Amundson, Collection Officer, Accounting and Property Services, USDA, to Bhagavan Antle (Mar. 25, 1992) (Ex. 22).

In addition, on or about October 11, 1991, Antle was ordered to leave Massachusetts and pay a \$50 fine after it was discovered that his permit to possess dangerous animals in the state had expired and he was in the state illegally. Memo from James Finn, Senior Investigator, New England, Animal and Plant Health Inspection Service (APHIS), USDA, to Valencia Colleton, Sector Supervisor, Animal Care, APHIS, USDA, 3 (Apr. 24, 1992) (Ex. 23).<sup>3</sup>

**D. T.I.G.E.R.S.'s Failure to Disclose Material Information Required in Connection with Its Application Prohibits the FWS from Granting the Requested Permit.**

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* 50 C.F.R. § 17.22 (stating that the FWS may only issue a § 10 permit “[u]pon receipt of a complete application”).

In addition to a demonstration that the organization’s proposed activities satisfy the Enhancement Requirement, and “[a] full statement of the reasons why the applicant is justified in obtaining a permit,” 50 C.F.R. § 17.22(a)(1)(vii), *see* § IV.A-B, *supra*, T.I.G.E.R.S.’s application materials lack the following required material information:

1. The “[l]ocation of parental stock” for each of the tigers. App. 7 (question 5.a.iii).
2. “[A] copy of the actual script or material that will be presented to the audience at *each* performance, show, *or viewing* of the specimen(s).” *Id.* at 9 (question 6.b.ii) (emphases added). The application states that “[n]o script per se is currently available” for the film. *Id.*
3. “When . . . the material [will] be presented[.]” *Id.* at 10 (question 6.b.iv). The application fails to discuss when, where, how, and to how many the film will be distributed or shown.

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<sup>3</sup> Additionally, on October 6, 1990, an arrest warrant was issued for Antle, after he held a photo session with tigers in Sevier County, Tennessee, charging him with allowing direct contact between dangerous animals and the public. Mark Hicks, *Wildlife Attraction Owner to Be Arrested for Letting Public Pose with Tigers*, The Journal, Oct. 6, 1990 (Ex. 24). PETA does not know whether Antle was ultimately convicted of this charge.



4. “A detailed description, including size, construction materials, [and] protection from the elements” of “the permanent facilities.” *Id.* at 12 (question 8.b). The application does not discuss the facilities’ “construction materials” or “protection from the elements.” *Id.* Nor does the application address how many tigers are kept in each 2,000 x 10,000 sq. ft. enclosure. *Id.* T.I.G.E.R.S.’s failure to provide adequate information about the tigers’ housing in Mexico is one of the reasons that the FWS rejected the facility’s virtually identical 2014 application. Letter from Timothy J. Van Norman to T.I.G.E.R.S. 2 (Dec. 11, 2014) (“the information regarding the facility housing the tigers while in Mexico is substandard”).
5. “The type, size, and construction of any shipping container.” App. 12 (question 8.c.i). T.I.G.E.R.S. states that the crates “meet IATA crate #72 requirements for shipping,” *id.*, but the IATA only establishes minimum requirements. The application does not *specify* what type of shipping container T.I.G.E.R.S. plans on using, the dimensions of the container, or how the container is constructed.
6. The “number” and “cause of the mortalities” of “*ESA listed species*” at the facility during the past five years. *Id.* at 13 (question 9) (emphasis added). The application states only that four tigers died of “age-related causes,” *id.*, but fails to specify what these causes are. (*E.g.*, cancer? Arthritis? Dementia? Heart failure? Kidney failure?) The application also claims that there are “100+ specimens in T.I.G.E.R.S.’s current inventory,” including many ESA-listed species such as elephants, tapirs, chimpanzees, mandrills, and orangutans, *id.* at 14, yet fails to provide mortality data for any of these animals.
7. “A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained.” 50 C.F.R. § 17.22(a)(1)(v). The application only provides the approximate size of the enclosures in which the tigers will be housed and states that these will “replicate the current housing at [T.I.G.E.R.S.’s] home facility.” App. 10. This hardly qualifies as the required “complete description.” Moreover, the application fails to describe where the tigers will be held while they are on set. Again, T.I.G.E.R.S.’s failure to provide adequate information about the tigers’ housing in Mexico is one of the reasons that the FWS rejected the facility’s virtually identical 2014 application. Letter from Timothy J. Van Norman to T.I.G.E.R.S. 2 (Dec. 11, 2014) (“the information regarding the facility housing the tigers while in Mexico is substandard”).

T.I.G.E.R.S.'s failure to provide the above material information disqualifies it from obtaining the requested permit. Furthermore, § 10(c) of the ESA provides that “[i]nformation 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). 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. If, at any point in its deliberation process, the FWS obtains any of the omitted material information, the agency must provide the information to the public, as well as an opportunity to review and comment on the information.

**E. The Application Should Be Denied Because T.I.G.E.R.S.’s Expertise, Staff, and Facilities Are Inadequate.**

In considering an application, § 17.22 of the regulations requires the FWS to consider “[w]hether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.” 50 C.F.R. § 17.22(a)(2)(vi). T.I.G.E.R.S. lacks the expertise, adequate staff, and facilities necessary to enhance species propagation or survival.

**1. T.I.G.E.R.S. lacks the expertise necessary to satisfy the Enhancement Requirement.**

T.I.G.E.R.S. lacks the expertise necessary to enhance the propagation or survival of endangered tigers. The fact that T.I.G.E.R.S. has irresponsibly hybridized tigers for many years attests to the fact that the organization does not have the knowledge of, or concern for, endangered-species conservation necessary to meet the Enhancement Requirement. Of ligers, lion-tiger hybrids, the organization’s website states:

Ligers are not something we planned on having. We have lions and tigers living together in large enclosures. We had no idea how well one of the tiger boys was getting along with a tiger girl. Low and behold, she had giant brown babies, and we knew we had ourselves some ligers.

Ligers, The Animals, <http://www.tigerfriends.com/ligers.html> (last visited Oct. 30, 2015) (Ex. 25). The banner on T.I.G.E.R.S.’ home page features a white tiger. *Id.* The Rare Species

Fund’s brochure features Antle with a liger, a lion-tiger hybrid, and repeatedly touts white tigers, including in an image promoting T.I.G.E.R.S. featuring “four color variations of tigers: . . . standard Bengal, golden tabby, snow white, and royal white;” an image featuring public handling of a white tiger cub described as an “ambassador” for conservation; an image of an adult white tiger at T.I.G.E.R.S.; and a promotion for a show that “features many rare and unique varieties of big cats, including four fantastic colors of Tigers.” Rare Species Fund, In Support of Outstanding Wildlife Conservation Initiatives (Ex. 26). The website’s “Tiger Information and Research Page”—which promises to “direct you to some of the better sites” on “big cat information on the web”—only lists two sites: Tiger Territory, <http://www.lairweb.org/nz/tiger/>, which it pronounces “[a] great place for information on every aspect of tigers including the hybrid ligers and tigons,” and [www.liger.liger.com](http://www.liger.liger.com), “for more information about ligers.” Tiger Information and Research Page, <http://www.tigerfriends.com/tigerlibrary.html> (last visited Oct. 30, 2015) (Ex. 27).

Inbreeding white tigers and other hybrids is inconsistent with bare minimum considerations for tiger health or welfare—let alone contribution to meaningful conservation efforts. Kidney abnormalities and other renal problems, in addition to other serious birth defects, are common among white tigers, who are the result of the unscrupulous inbreeding practices. Indeed, it is because “the recessive gene for the white color is a deleterious mutation and is thus co-linked to numerous . . . often fatal characteristics” that the neonatal mortality rate for white tigers exceeds 80%. *See* Laren Begany & CL Cricuolo, Accumulation of Deleterious Mutations Due to Inbreeding in Tiger Populations 4 (Apr. 27, 2009) (Ex. 28). Experts have noted that, among white tiger cubs who survive infancy, “most have profound birth defects, such as strabismus (cross eyes), retinal degeneration, cleft palates, scoliosis of the spine, clubbed feet, immune deficiencies, and kidney abnormalities.” Sarda Sahney, *The Myth of the Endangered White Tiger*, *Science 2.0* (Aug. 30, 2007) (Ex. 29); *see also* Ravi Romaiya, *Inside America’s Tiger Breeding Farms*, *Newsweek*, July 28, 2010 (Ex. 30); White Tigers: Inbreeding Depression and Genetic Abnormalities, *Cat Resource Archive* (Ex. 31).

Furthermore, as previously discussed in § IV.A.1, *supra*, T.I.G.E.R.S.’s website betrays an appalling want of knowledge about tiger species and conservation. For example, despite the consensus among experts, the AZA, and the FWS itself that hybrid tigers, including white tigers, have no conservation value, *see id.*, T.I.G.E.R.S.’s website touts its ownership of the so-called

“Royal White Bengal tiger,” which “ha[s] been displayed in only a few locations around the world.” Tigers, The Animals <http://www.tigerfriends.com/tigers.html> (last visited Oct. 30, 2015). Although the organization acknowledges that “the Royal White tiger is not a separate species of tiger,” it suggests that white tigers have special value requiring conservation through the “Royal White Bengal” name and statements like “it is “a unique color that enabled the[se tigers] to exist in the snow covered Himalayas for thousands of years.” *Id.*

T.I.G.E.R.S.’s website similarly suggests that the “Golden Tabby tiger”—“one of the world’s rarest big cats”—is a separate species of tiger requiring conservation. *Id.* The organization boasts that “[t]his type of tiger became extinct in the wild in 1932,” but that “[f]rom work done by us at [T.I.G.E.R.S.] and our breeding partner Dr. Jossip Marcan we have brought back from the very edge of extinction the Golden Tabby Tiger.” *Id.* T.I.G.E.R.S. is “very proud to say that since the first birth in 1987 that their [sic] are now more than 30 Golden Tabby tigers in existence today.” *Id.*

Indeed, despite the overwhelming consensus on the importance of maintaining genetic diversity within species, by its own admission, “maintaining genetic purity is not [T.I.G.E.R.S.’] priority.” Karen R. Lovely, *Issues of Captivity and Conservation Surrounding Pantherine Cats with a Focus on the Lion (Panthera Leo) and the Tiger (Panthera Tigris)* 26 (2009) (unpublished A.B. thesis, Harvard University) (Ex. 32). Antle argues that captive-breeding best practices include “[b]reeding animals that appeal to the public physically and personality-wise,” such as white tigers, *id.*, even while the AZA likens the public’s attraction to such animals as akin to its fascination with the “spectacle provided by displays of calves with two heads,” and states that, “in terms of effective conservation management and population health, selective breeding for specific phenotypes is in direct opposition to standard zoo population management goals.” AZA, *Welfare and Conservation Implications of Intentional Inbreeding for the Expression of Rare Recessive Alleles* 2, 4 (2011) (Ex. 33).

T.I.G.E.R.S. has clearly failed to show that it has the knowledge necessary to enhance the survival of endangered tigers, and the FWS must reject the application.

## **2. T.I.G.E.R.S.’s staff is inadequate.**

The FWS recently explained that it has “received applications . . . where there is a very limited discussion of the applicant’s expertise.” E-mail from Timothy J. Van Norman to Alan Shoemaker 3 (May 19, 2015) (Ex. 34). The agency made clear that applicants should “identify,

when appropriate, who is handling their veterinary care,” and “[i]f the applicant is relying on a mentor to address care issues, they should identify the mentor and their expertise.” *Id.* However, the current application fails to identify a person responsible for the tigers’ veterinary care, either in transport or in Cancun.

Antle’s dubious expertise also calls the adequacy of T.I.G.E.R.S.’ staff into question. Antle claims that he “graduated with his doctorate in medicine from the Chinese Science Foundation in China,” App. 11, but there is no reference to such a school on the internet, only to a government organization responsible for promoting science and engineering, modeled after the National Science Foundation in the U.S. Nor does Antle indicate where in the country of 1.355 billion people the medical school is located. *Id.* In the past, Antle also frequently claimed to have a degree from the British College of Natural Science in Poole, England, but, according to a *Tennessean* report, the library in Poole had no record at all of this college, which Antle says closed in 1984, nor could the British Ministry of Education find evidence of the school. *Cheatham Zoo Owner’s File Includes Mauling Charge*, *Tennessean*, Mar. 14, 1993, at 1A (Ex. 35). An internal USDA memorandum, dated Apr. 24, 1992, states that “Mr. Antle or Dr. Antle as he prefers to be called . . . claims he is a field surgeon who was trained in China. He holds no recognized degree. His business . . . include[s] placing Lions and Tigers in direct contact with the public. The public is permitted to sit with the animal while a picture is taken.” Memo from James Finn to Valencia Colleton 1 (Apr. 24, 1992) (Ex. 36). A USDA investigator also reported in 1990 that Antle was “asked to leave” the Nashville Zoo, where he was associated. Alleged Violation of Kevin Antle (Dec. 5, 1990) (Ex. 37).

In addition, a 1991 report by the Animal Rescue League of Boston notes that, when Antle was told that he and his staff were witnessed striking animals with a closed fist, Antle admitted that striking animals was his training technique, but contended that it is cruel only if one causes visible damage to the animals. Report, Animal Rescue League of Boston (Oct. 1991) (Ex. 38).

Finally, the requirements for T.I.G.E.R.S.’s apprenticeship program call into question the qualifications of the facility’s staff. Although T.I.G.E.R.S. emphasizes that “[a]nimal trainers do not need traditional schooling,” applicants are *required* to “study . . . physical and philosophical yoga . . . and meditation,” and read “*Ishmael, My Ishmael*, and *the Story of B* by Daniel Quinn.” How to Become an Apprentice @ T.I.G.E.R.S., <http://www.tigerfriends.com/apprentice.html> (last visited Oct. 30, 2015) (Ex. 39). According to Publishers Weekly, the latter novel is about “a

priest of the Laurentians, a fictional Roman Catholic order under an ancient, covert mandate to stand watch against the coming of the Antichrist,” who comes to learn, “[t]hrough long, often numbingly repetitive parables and speeches,” “the solutions to overpopulation, ecological despoliation, cultural intolerance and other ills that have dogged civilization since the time of ‘the Great Forgetting’ 10,000 years ago.” The Story of B, <http://www.amazon.com/The-Story-B-Daniel-Quinn/dp/0553379011> (last visited Oct. 30, 2015) (Ex. 40). Before applying, applicants are also required to watch the movies “The Devil Wears Prada,” “Living Yoga,” “Five People You Meet in Heaven,” “What the Bleep Do We Know!?,” “What a Way to Go, Life at the End of the Empire,” and “Kill Bill 2”—because “the cruel tutelage of Pai Mei the Asian martial arts master” in the Quentin Tarantino film is purportedly “a taste of what [T.I.G.E.R.S.] will put [apprentices] through.” How to Become an Apprentice @ T.I.G.E.R.S., <http://www.tigerfriends.com/apprentice.html> (last visited Oct. 30, 2015).

Clearly, T.I.G.E.R.S. has failed to meet its burden of demonstrating that its staff is qualified to satisfy the Enhancement Requirement.

**3. The FWS cannot make a finding that T.I.G.E.R.S.’s facilities “appear adequate” to enhance the propagation or survival of endangered species.**

**i. There is insufficient information in the record to establish that T.I.G.E.R.S.’s facilities are adequate.**

T.I.G.E.R.S.’s failure to provide adequate information about the tigers’ housing in Mexico is one of the reasons that the FWS rejected the facility’s virtually identical 2014 application. Letter from Timothy J. Van Norman to T.I.G.E.R.S. 2 (Dec. 11, 2014) (“the information regarding the facility housing the tigers while in Mexico is substandard”). The application continues to fail to provide sufficient information for the FWS to determine whether T.I.G.E.R.S.’s facilities “appear adequate” to meet the Enhancement Requirement.

T.I.G.E.R.S. only provides the approximate size of the enclosures in which the tigers will be housed and states that these will “replicate the current housing at [T.I.G.E.R.S.’s] home facility.” App. 10. Moreover, the application fails to describe where the tigers will be held while they are on set. This hardly qualifies as the required “complete description” of the “facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained.” 50 C.F.R. § 17.22(a)(1)(v). In addition, the application fails to address the

permanent facilities' "construction materials" or "protection from the elements," as Question 8.b requires, or how many tigers are housed in each 2,000 x 10,000 sq. ft. enclosure. App. 10. Given the paucity of information in the application on which the agency can base a finding that T.I.G.E.R.S.'s facilities "appear adequate," the FWS must deny the requested permit.

**ii. In fact, T.I.G.E.R.S.'s facilities are inadequate to satisfy the Enhancement Requirement.**

In fact, looking beyond the four corners of the application, it is clear that T.I.G.E.R.S.'s facilities are *inadequate* to enhance the propagation or survival of endangered tigers. Since 1988, the USDA has cited T.I.G.E.R.S. or Antle for dozens of AWA violations related to its inhumane, structurally unsound, unsanitary, and unsafe facilities, including:

- On April 28, 2015, the USDA cited T.I.G.E.R.S. for "vermin/pest infestation" in the food preparation room. USDA Inspection Reports 1 (Ex. 41).
- On February 5, 2014, the USDA cited T.I.G.E.R.S. for failure to provide a ten-month-old male tiger with a secure enclosure. *Id.* at 3.
- On August 21, 2013, the USDA cited T.I.G.E.R.S. for failure to maintain the food-storage areas. The shelves in the walk-in cooler were coated with a thick, unidentifiable white substance, and the floor had a "broken/missing tile." *Id.* at 4.
- On October 6, 2012, the USDA cited T.I.G.E.R.S. for failure to handle an adult liger and tigers in a safe manner during public exhibition. The handler led the big cats onto the stage by a chain leash with only a 3- to 4-foot-tall wooden rail as a barrier between the animals and the audience. *Id.* at 5.
- On November 16, 2010, T.I.G.E.R.S. was cited for failure to maintain structurally sound housing facilities. Although an adult tiger escaped from an uncovered outdoor primary enclosure, forty-three adult tigers, three ligers, and two lions were being housed on a rotating basis in similar uncovered enclosures, which had proved not to be able to contain all large cats adequately. Many of these enclosures also had a substantial number of vines growing up the sides and accumulating at the top of the fences, which could aid in big-cat escapes. *Id.* at 6.

- On September 1, 2010, T.I.G.E.R.S. was cited for failure to maintain structurally sound housing facilities after moving an adult tiger who had recently escaped from his enclosure to a similarly constructed enclosure. *Id.* at 7.
- On August 28, 2010, an adult tiger and a monkey both escaped from enclosures at Antle's Miami exhibition location, the Jungle Island Zoo. *Id.* A USDA inspector wrote: "The tiger was motivated to chase a nonhuman primate which had entered the enclosure through the uncovered top and was quickly trying to exit back out of the enclosure after encountering a tiger. The tiger was able to scale a 12 foot tall corner, engage and damage the kick back and subsequently escape over the top of the enclosure. The tiger did not fall or jump cleanly upon exiting the enclosure and was stunned for a short time after hitting metal poles and parts of the barrier fence surrounding the outside of the enclosure." *Id.* According to *Time*, visitors had to scramble frantically to get away from the 700-pound tiger, and one woman claimed that the tiger got within 10 feet of her 2-year-old daughter. Megan Friedman, *Meet Mahesh, the Incredible Jumping Tiger*, *Time*, Aug. 31, 2010 (Ex. 42).
- On December 13, 2007, the USDA cited T.I.G.E.R.S. for exhibiting big cats without sufficient distance or barriers present. An eight-month-old tiger was led down a walkway and passed closely by the public without sufficient security measures in place, and a cougar was exhibited without sufficient distance from the public. USDA Inspection Reports 10.
- On June 13, 2007, T.I.G.E.R.S. was cited for failure to have adequate cleaning, sanitation, housekeeping, and pest control, as well as for maintaining structurally unsound enclosures. The light fixture in the mandrill enclosure had hot wire surrounding it, which was covered in spider webs, and live spiders were observed in the area. A female tiger was housed in a chain-link enclosure in which the bottom edge of the chain link was not secured. There was potential for the tiger to dig and escape or for other animals to dig into the enclosure. In addition, three stalls housing eight animals had no artificial light, which prevented proper inspection of the animals and the enclosures. *Id.* at 11-12.
- On March 3, 2006, the USDA cited T.I.G.E.R.S. for inadequate lighting. A mandrill was intermittently housed in an enclosure that was not sufficiently illuminated to permit adequate observation of the animal or to maintain good housekeeping practices and adequate cleaning. *Id.* at 15.



- On March 30, 2005, the USDA cited T.I.G.E.R.S. for failure to keep his premises clean and in good repair. Potentially toxic chemicals, including paints and insecticides, were stored in open bins in the areas housing the binturongs and a skunk, and a gas-fueled motorcycle was stored in the area housing the porcupine and coatimundi. *Id.* at 17.
- On October 22, 2002, T.I.G.E.R.S. was cited by the USDA for failure to maintain structurally sound primate housing facilities. An enclosure had a damaged light fixture hanging from the ceiling, as well as several screws protruding from exhibit surfaces, which could injure the enclosed primate. *Id.* at 20.
- On January 24, 2002, T.I.G.E.R.S. was cited for several door openings that had been cut through concrete block walls, resulting in rough surfaces, which could not be easily cleaned and could injure the animals. *Id.* at 21.
- On December 13-14, 1993, the USDA cited T.I.G.E.R.S. for multiple AWA violations, including failure to keep animal enclosures clean; storing the hay for the elephant on the ground where it was exposed to the elements; failure to provide enough space to allow the wolf-hybrids and the tigers to make normal postural adjustments; failure to provide a tiger and leopard with protection from the elements; failure to provide adequate drainage; and failure to maintain fences properly, and failure to keep the premises clean and in good repair. *Id.* at 38-41.
- On March 2, 1993, the USDA cited T.I.G.E.R.S. for failure to maintain a safe enclosure for two lemurs. Fluorescent lights and electrical wire were within the animals' reach, and a fence in an exercise pen had sharp and twisted ends. The food trailer was also littered with manure and debris. *Id.* at 51.
- On May 27-28, 1992, the USDA cited T.I.G.E.R.S. for maintaining an unsafe corral with sharp, wire edges for the zebra, burro, and sheep. *Id.* at 56-57.
- On March 13, 1992, a letter from the USDA to Antle noted that “[o]n the last USDA attempted inspection of your facility . . . four non-compliant items were documented which also appeared on [two] previous inspections,” including inadequate outdoor drainage and pest control. The letter went on to say that noncompliant items found on two consecutive inspections ordinarily warrant the initiation of legal action. Letter from Joseph A. Walker, DVM, Sector Supervisor, Animal Care—Southeast Sector, APHIS, USDA, to Bhagavan Antle (Mar. 13, 1992) (Ex. 43).

- On February 11-12, 1992, T.I.G.E.R.S. was cited by the USDA for numerous AWA violations, including failure to keep primate cages clean and sanitary; failure to ventilate the primate enclosure properly; failure to protect primates from the elements; and inadequate drainage in the zebra and water buffalo enclosures. T.I.G.E.R.S. was also cited for failure to correct noncompliant items cited in previous inspections, including not providing adequate drainage in a guanaco pen and not addressing the rodent problem in a leopard's den box. The inspector was also unable to inspect a transport vehicle with a broken taillight and mice in the bedding because the vehicle was off-site. USDA Inspection Reports 60-63.
- On October 18-19, 1991, the USDA cited T.I.G.E.R.S. for keeping an electric space heater in the elephant enclosure with the cord hanging within reach of the elephant when the animal was being moved. The inspector noted that he was concerned about the safety of having an electric heater in general and in barns in particular. In addition, the inspector said that the space heater was left on even when no attendant was present. T.I.G.E.R.S. was also cited for failure to maintain safe zebra, primate, and leopard enclosures; not having reliable electric power; failure to store bedding to prevent contamination; failure to provide adequate drainage; failure to clean the coatimundi cage; failure to clean the performance and holding areas; and failure to address pest control. T.I.G.E.R.S.'s transport vehicles further had multiple problems, including a broken taillight, broken mirrors, and unstable construction. In addition, the USDA cited T.I.G.E.R.S. for failure to correct items that were found noncompliant during previous inspections, including several animal enclosures in need of repair. *Id.* at 67-70.
- On October 11, 1991, the USDA cited T.I.G.E.R.S. for failure to keep enclosures free of debris and transport vehicles clean. *Id.* at 74.
- On September 23-24, 1991, T.I.G.E.R.S. was cited for multiple AWA violations, including failure to provide a monkey with enough space to stand erect with the animal's arms in the air; failure to provide the animals with structurally safe and sound housing; failure to provide adequate drainage; failure to keep the premises clean; and failure to provide adequate pest control. *Id.* at 78-80.
- On July 16, 1991, the USDA again cited T.I.G.E.R.S. for numerous violations of the AWA, including providing the animals with structurally unsafe and unsound housing; failure to provide adequate ventilation; failure to protect food and bedding from contamination; failure

to protect animals from predators (a monkey was kept next to a coyote, and a baboon was kept next to a jaguar, which led the baboon to bite his own legs); failure to provide adequate lighting; failure to keep enclosures clean; failure to keep facilities and grounds clean and in good repair; failure to provide adequate pest control, failure to provide maintain a structurally sound perimeter fence between an elephant and the highway; failure to provide animals with shade; failure to provide animals with protection from the elements; and failure to keep transport trailers structurally sound and in good repair. *Id.* at 86-92.

- During a pre-license inspection on May 7, 1991, the USDA advised Antle that he needed a perimeter fence to contain the elephant or to protect the animal from predators or vandals, as well as to provide the primates with adequate lighting. *Id.* at 94.
- During a pre-license inspection on March 12, 1991, the USDA advised Antle that he would need to make numerous changes to comply with the AWA, including installing an adequate fence; providing three primates housed in outdoor facilities in the winter with artificial heat; providing adequate space between animals and the public; and implementing measures to safeguard animals from drowning in a moat. *Id.* at 98.
- During a pre-license inspection on January 24, 1990, the USDA advised Antle that he could not comply with the AWA until he provided the primates with a source of heat in the cold weather. *Id.* at 102.
- On March 15, 1989, the USDA cited Antle's previous facility, the Buckingham Zoological Park, for failure to maintain the structural strength of a perimeter fence. *Id.* at 108.
- On June 17, 1988, Antle's previous facility was cited for failure to maintain adequate drainage. *Id.* at 112.
- On March 24, 1988, the USDA cited Antle's previous zoo for failure to maintain the structural strength of the animal enclosures, to protect food from contamination, and to clean excreta from enclosures. *Id.* at 116-18.

\* \* \*

In sum, the FWS must reject T.I.G.E.R.S.'s permit application because the organization's "expertise, facilities, [and] other resources" are inadequate "to successfully accomplish the objective stated in the application. 50 C.F.R. § 17.22(a)(2)(vi).

**F. The FWS Cannot Issue the Requested Permit Because T.I.G.E.R.S. Has Not—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 TZC could meet the requirements of the requested export 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”). The FWS must also deny the requested permit because T.I.G.E.R.S. has not—and cannot—make the required showing of responsibility.

**1. T.I.G.E.R.S. cannot make the required showing of responsibility because it has a long history of ignoring the conservation needs of endangered tigers.**

T.I.G.E.R.S. cannot demonstrate that it can meet the requirements of an enhancement permit, given the facility’s long history of placing profit over the conservation needs of endangered tigers.

There are more tigers in captivity in the United States than remaining in the wild. U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 52297, 52298 (Aug. 22, 2011). The World Wildlife Fund (WWF) notes that, due to “lax management, . . . [o]nly six percent of the US captive tiger population resides in zoos and other facilities accredited by the Association of Zoos and Aquariums,” while “[t]he rest are found in other private hands—some regulated by the US Department of Agriculture, some under state regulation, and some under virtually no regulation at all.” WWF, *More Tigers in American Backyards than in the Wild*, <http://www.worldwildlife.org/stories/more-tigers-in-american-backyards-than-in-the-wild> (last visited Oct. 28, 2015) (Ex. 44). “For many years, the international community has expressed concern about the status of tigers in the wild and the risk that captive tigers may sustain the demand for tiger parts, which would ultimately have a detrimental effect on the survival of the species in the wild.” U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 52297, 52298 (Aug. 22, 2011); *see, e.g.*, WWF, *More Tigers in American Backyards than in the Wild*, <http://www.worldwildlife.org/stories/more-tigers-in-american-backyards-than-in-the-wild> (last visited Oct. 28, 2015). In response to the risk “that tiger parts are entering into

trade from the captive U.S. population of tigers,” the FWS has proposed to close the generic-tiger exemption at 50 C.F.R. § 17.21(g)(6), “given the precarious status of tigers in the wild.” *Id.* at 52299.

Nonetheless, despite its stated commitment to conservation, the overpopulation of captive tigers in the U.S. hasn’t stopped T.I.G.E.R.S. from breeding more tigers than it can maintain at its facilities. A recent article in *Rolling Stone* offered this description of T.I.G.E.R.S.’s “core business”:

[T.I.G.E.R.S.] hous[es] people-friendly lions and tigers, and sell[s] pictures of customers holding their cubs. Tours, offered three times a week during the summer, cost \$339 per person; professional photos start at \$150 (personal photos and videos are forbidden). That’s a lot more expensive than a zoo. But no zoo—or, at least, no mainstream zoo in the U.S.—breeds baby apex predators for guests to play with. . . . Antle’s isn’t the only U.S. park that offers cub petting[,] . . . but it is the largest and most sophisticated. T.I.G.E.R.S. also operates a satellite storefront at an outdoor mall in Myrtle Beach that sells cub photos every summer evening, and a smaller facility in Miami that performs a big cat show at the Jungle Island amusement park.

Ian S. Port, *The Man Who Made Animal Friends*, *Rolling Stone*, Sept. 21, 2015.

According to Antle, T.I.G.E.R.S. “breeds about 10 to 15 new cubs every season to sustain these operations,” but “only has room to keep a handful of newborns.” *Id.* (The Humane Society of the U.S. (HSUS), which has extensively investigated T.I.G.E.R.S., thinks that it could be breeding as many as fifty cubs a season. *Id.*). That means that, every single season, the facility has to offload approximately a dozen others. Yet, because of T.I.G.E.R.S.’s breeding practices AZA-accredited zoos won’t take tigers from the facility, and “Antle admits that he has given cats to parks that have no accreditation at all.” *Id.*

Moreover, at the Tiger Species Survival Plan’s (SSP) 2002 master-plan meeting in Portland, “[t]here was a complete consensus of all members in attendance that” “handling tigers in public places” delivers “no education message of value” and “promote[s] private ownership,” as well as that “the animal itself loses its dignity as an ambassador from the wild.” AZA Annual Report of the Tiger SSP: 2002 (Ex. 45). And the cubs being bred and then discarded by T.I.G.E.R.S. have no value for conservation, since “Antle doesn’t keep track of whether an Amur tiger mates with a Malayan.” Ian S. Port, *The Man Who Made Animal Friends*, *Rolling Stone*,

Sept. 21, 2015. Despite widespread recognition that “breeding inter-subspecific crossed or generic tigers provides [no] conservation benefit for the long-term survival of the species,” U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 52297, 52299 (Aug. 22, 2011), Antle told an interviewer that “maintaining genetic purity is not [his] priority.” Karen R. Lovely, *Issues of Captivity and Conservation Surrounding Pantherine Cats with a Focus on the Lion (Panthera Leo) and the Tiger (Panthera Tigris)* 26 (2009) (unpublished A.B. thesis, Harvard University). Instead, T.I.G.E.R.S. “selectively bre[e]d[s]” for tigers that are “cooperative on stage” and have the right kind of physical features to “enhance[] a cat’s performance ratings in a public show.” *Id.* at 27.

Conservation clearly is not the driving force between T.I.G.E.R.S.’s work: Profit is. *Rolling Stone* estimates that “the Myrtle Beach park alone grosses around \$1.3 million annually” and that “[t]he cub photo storefront, the Miami location and video work bring in millions more.” Ian S. Port, *The Man Who Made Animal Friends*, *Rolling Stone*, Sept. 21, 2015. Antle admits that he charges the public “a ton” to interact with tiger cubs, calling himself “a snake-oil salesman.” *Id.* In light of T.I.G.E.R.S.’s willingness to imperil endangered tigers for monetary gain, the facility cannot demonstrate that it will meet the requirements of an enhancement permit.

**2. T.I.G.E.R.S. cannot make the required showing of responsibility because it routinely subjects endangered tigers and other animals to inhumane and unhealthful conditions.**

T.I.G.E.R.S. also cannot show that it would meet the requirements of the requested ESA permit because it cannot show, *inter alia*, that it will comply with 50 C.F.R. § 13.41, which mandates that “[a]ny live wildlife possessed under a permit must be maintained under humane and healthful conditions.” 50 C.F.R. § 13.41; *see also id.* § 13.2 (“The regulations contained in this part provide uniform, rules, conditions, and procedures for the . . . issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this subchapter B.”); *id.* § 17.22(a)(e) (“[p]ermit conditions” include “any applicable general permit conditions set forth in part 13”); *id.* § 23.56(a)(1) (“You must comply with the provisions of part 13 of this subchapter as conditions of the [CITES] document . . .”).

In addition to increasing the risk that tiger parts from the captive U.S. population of tigers will enter into trade, overbreeding tigers raises serious animal-welfare concerns. Carole Baskin, the founder of Big Cat Rescue, a facility accredited by the Global Federation of Animal

Sanctuaries that is one of the largest sanctuaries in the world for abused and abandoned big cats, explains that “[t]here is currently a staggering surplus of unwanted and neglected big cats in the U.S., but few facilities have the resources and capabilities to care for them. . . . The large surplus of unwanted cats is due in large part to unmanaged and irresponsible breeding that routinely occurs, much of which is motivated”—as at T.I.G.E.R.S.—“by the demand for young animals to use in public contact exhibition.” Decl. of Carole Baskin ¶¶ 3-4 (Oct. 17, 2012) (Ex. 46). “Due to financial constraints,” accredited sanctuaries like Big Cat Rescue “routinely have to refuse to take in big cats who need sanctuary,” so that “unwanted big cats (many of whom were used in public contact exhibition until they grow too large) are often sent to substandard facilities with inadequate living conditions.” *Id.* ¶ 4. Again, “Antle admits that he has given cats to parks that have no accreditation at all.” Ian S. Port, *The Man Who Made Animal Friends*, Rolling Stone, Sept. 21, 2015.

Furthermore, public exhibition of tiger cubs, as practiced by T.I.G.E.R.S., is almost always associated with the premature separation of cubs from their mothers. In the wild, tiger cubs usually stay with their mothers until they are 2.5- to three-years old. Decl. of Ronald Tilson ¶ 8 (Oct. 6, 2012) (Ex. 47). The late Ronald Tilson, who served for more than two decades as Director of Conservation for the Minnesota Zoo and coordinator of the AZA Tiger SSP, reported that “[t]iger experts with hundreds of years of experience in captive propagation agree that it is normally in a cub’s best interest to stay with its mother until the species-typical age of dispersal (i.e., 2.5-3 years),” and that “[p]rematurely removing a big cat cub from its mother is not condoned by the majority of animal care professionals because it . . . can lead to negative long-term health and behavioral repercussions.” *Id.* However, by Antle’s own admission, T.I.G.E.R.S. sends cubs that it can no longer use to “parks all over the world, including locations in Argentina, Thailand, and California,” when the “cats reach four to eight months old.” Ian S. Port, *The Man Who Made Animal Friends*, Rolling Stone, Sept. 21, 2015. And an undercover investigation by HSUS found that T.I.G.E.R.S. separated a three-week-old cub, Sarabi, from his mother and shipped him to Tiger Safari in Oklahoma, where twenty-seven visitors handled him on the very day he arrived. *Id.*

Moreover, in addition to citing the organization dozens of times for unsafe, unsanitary, unsound, and inhumane facilities, *see* § IV.E.3.ii, *supra*, the USDA has also cited T.I.G.E.R.S.

and/or Antle for more than two-dozen AWA violations related to the health and well-being of animals, many of them endangered. For example:

- On April 22, 2008, the USDA cited T.I.G.E.R.S. for failure to establish and maintain programs of adequate veterinary care. The most recent tuberculosis test results available for an elephant were from more than a year before even though this elephant had direct contact with the public and tuberculosis is a contagious disease affecting elephants, humans, and other animals. Professional guidelines indicated that tuberculosis testing needed to be conducted no less than annually. USDA Inspection Reports 9.
- On June 13, 2007, the USDA cited T.I.G.E.R.S. for failure to observe all animals on a daily basis to assess their health and well-being, after investigators found that a white tiger had a red, raised nodular mass on the inside of his left ear, of which T.I.G.E.R.S. was unaware. *Id.* at 11.
- On April 9, 2007, T.I.G.E.R.S. was cited by the USDA because the attending veterinarian had not formally reviewed the written program of veterinary care for eighteen months, nor had the attending veterinarian conducted a formal site visit in that period. The exhibitor was also cited for failure to provide adequate environmental enrichment to a mandrill with marked signs of psychological stress. *Id.* at 13.
- On June 29, 2005, T.I.G.E.R.S. was cited for failure to document an appropriate plan of environment enhancement for the nonhuman primates. *Id.* at 16.
- On August 4, 2003, the USDA cited T.I.G.E.R.S. for failure to provide wholesome, palatable food of sufficient quality and nutrient value. The big-cat diet assigned by the attending veterinarian, required a percentage of commercially-prepared food, but no commercially-prepared diet food be identified on the premises. *Id.* at 19.
- On April 13, 1999, the USDA cited T.I.G.E.R.S. for failure to prepare and implement a written feeding plan for the bit cats at his facility. *Id.* at 25.
- On December 13-14, 1993, the USDA cited T.I.G.E.R.S. for multiple AWA violations, including failing to keep food and water receptacles clean and to provide the hoofstock with a water source other than a pond. *Id.* at 40.
- On July 14, 1993, the USDA once again cited T.I.G.E.R.S. for failure to provide a program of veterinary care. *Id.* at 45.



- On April 12, 1993, T.I.G.E.R.S. was cited for failure to provide a written program of veterinary care. *Id.* at 48.
- On March 2, 1993, T.I.G.E.R.S. was cited by the USDA for failing to provide a written program of veterinary care and keeping expired medications. *Id.* at 52.
- On May 27-28, 1992, the USDA cited T.I.G.E.R.S. for failure to provide adequate veterinary care to a zebra who had long, cracked front hooves that were partially broken off and needed to be trimmed. *Id.* at 57.
- On February 11-12, 1992, the USDA cited T.I.G.E.R.S. for multiple AWA violations, including failure to implement a program of environmental enrichment for the primates; failure to keep food uncontaminated, failure to handle animals in a safe manner; and failure to provide veterinary care to several animals who required treatment. A potbellied pig was found limping after being injured by dogs; a lion had old wounds that needed care; a macaque was in the performance area with a bandaged tail; and a leopard had hair loss on his neck and apparent chronic thickened skin. T.I.G.E.R.S. was also cited for failure to correct noncompliant items cited in previous inspections, including failure to provide proof that a veterinarian had attended to hair loss on a leopard and coatimundi. *Id.* at 62.
- On November 19, 1991, T.I.G.E.R.S. was cited for failure to keep the primates' food receptacles clean (algae was found inside a bucket) and to provide proof that a leopard who was suffering from chronic hair loss and a coatimundi whose coat was in poor condition had been seen by a veterinarian. *Id.* at 67-69.
- On October 11, 1991, T.I.G.E.R.S. was cited by the USDA for failure to provide a mountain lion, two tigers, and a lion with clean water (the containers were "rusty old frying pans and/or dirty"), as well as to provide a lion and a tiger with veterinary care. *Id.* at 74-76.
- On September 23-24, 1991, T.I.G.E.R.S. was cited for multiple AWA violations, including failure to provide primates with sufficient space to make normal postural adjustments; failure to provide dogs with an exercise plan; failure to provide primates with a program of environmental enrichment; failure to provide a young zebra with an adequate diet; failure to provide an unhealthy young zebra with veterinary care; failure to provide wholesome food; and failure to protect food from contamination. *Id.* at 82-84.
- On July 16, 1991, the USDA again cited T.I.G.E.R.S. for multiple AWA violations, including failure to protect food and bedding from contamination; failure to keep food

receptacles clean; failure to provide adequate water; failure to clean water receptacles; failure to provide an approved program of veterinary care; and failure to handle animals in a careful manner. *Id.* at 86-90.

- During a pre-license inspection on May 7, 1991, T.I.G.E.R.S. was advised that it needed to provide the primates with a program of environmental enrichment and to provide animals with an adequate source of water, in order to meet the AWA standards. *Id.* at 94.
- During a pre-license inspection on March 12, 1991, the USDA advised Antle that, in order to comply with the AWA, he needed to hire a new veterinarian because “no form of veterinary care exist[ed] at th[at] point.” *Id.* at 98.
- During a pre-license inspection on January 24, 1990, the inspector voiced concern with the attending veterinarian’s inadequate experience in exotic-animal care. *Id.* at 102. The inspector stated: “I do not feel [the veterinarian] could fulfill the qualifications of attending veterinarian if he were the only one servicing this facility.” *Id.*
- On March 24, 1988, Antle was cited for failing to protect food from contamination. *Id.* at 116.

In addition, on February 13, 1992, Dr. David L. Ratliff, DVM, wrote a letter to the USDA addressing multiple veterinary concerns found at T.I.G.E.R.S. Letter from David L. Ratliff, DVM, to USDA (Feb. 13, 1992) (Ex. 48). A monkey was found to have deep pyoderma on the tip of his tail and was placed on antibiotics. *Id.* A coatimundi was found to have hair loss on his rump and tail consistent with allergic dermatitis and was placed on low-dose steroids for relief. *Id.* One leopard was found to be suffering from hair loss because of excessive grooming by another leopard, and a third leopard had a long-term overgrooming problem not alleviated by drugs. *Id.* A pig who received a bite was found to have developed deep cellulitis as a result and was placed on antibiotics. *Id.* And a lion, who also had old scars, had bilateral alopecia on his rump because of pacing in the cage during transport from Korea. *Id.*

Finally, a two-page report issued by the Animal Rescue League of Boston on October 9, 1991, reported that inspectors found a cougar, lion cub, hawk, and eagle without water; that the water for the white tiger was in a “rusted pan;” and that the water receptacles for the lion and tiger were “very small.” Report, Animal Rescue League of Boston (Oct. 1991). After being informed that he and his staff were witness striking the animals with closed fists, Antle admitted

that striking animals was his normal training technique, but contended that it is only cruel if one causes visible damage to the animals. *Id.*

T.I.G.E.R.S. clearly cannot make the required showing of responsibility with this sustained twenty-five-year history of maintaining animals in inhumane and unhealthful conditions, and, thus, the FWS must not issue the requested permit.

**2. T.I.G.E.R.S. cannot make the required showing of responsibility due to its decades-long history of contempt for the law and administrative requirements.**

T.I.G.E.R.S. also cannot make the required showing of responsibility because of its consistent disregard for the law and administrative requirements. In addition to citing T.I.G.E.R.S. or Antle countless times, the USDA filed charges against Antle on February 24, 1993, for violating food-and-drug law related to the interstate movement of animals. Compl., *In re Kevin Antle*, A.Q. Docket No. 93-22 (USDA Feb. 24, 1993) (Ex. 49). Earlier, on October 22, 1991, Antle was ordered to pay a \$3,500 civil penalty for willfully violating the AWA by failing to maintain housing facilities in good repair; failing to maintain structurally sound housing facilities; failing to protect food and bedding from contamination and infestation; failing to provide adequate drainage; failing to adequately clean and sanitize animals' primary enclosures; failing to keep the premises clean and in good repair; failing to maintain acquisition and disposition records for the animals; and exhibiting animals without a license. Consent Decision and Order, *In re Bhagavan Kevin Antle*, AWA Docket No. 91-67 (USDA Oct. 22, 1991). The USDA sent a letter to Antle on March 25, 1992, demanding payment of the \$3,500 civil penalty because the check that Antle had sent had already been rejected twice by the bank due to insufficient funds. Letter from Phil Amundson to Bhagavan Antle (Mar. 25, 1992).

Again, on or about October 11, 1991, Antle was ordered to leave Massachusetts and pay a \$50 fine after it was discovered that his permit to possess dangerous animals in the state had expired and he was in the state illegally. Memo from James Finn to Valencia Colleton 3 (Apr. 24, 1992).

And, on October 6, 1990, an arrest warrant was issued for Antle, after he held a photo session with tigers in Sevier County, Tennessee, charging him with allowing direct contact between dangerous animals and the public. Mark Hicks, *Wildlife Attraction Owner to Be Arrested for Letting Public Pose with Tigers*, *The Journal*, Oct. 6, 1990. An article in *The*

*Journal* reported that Antle had been the subject of investigations by both the USDA and the Tennessee Wildlife Resources Agency and “had [also] been targeted with several lawsuits.” *Id.*

In a USDA internal memorandum addressing an investigation into Antle, dated May 7, 1992, the investigator wrote that “Antle’s statements concerning the incidents and related problems were inconsistent in many areas. The feeling of all the investigators mentioned in this report is Antle is of questionable character. His description of the incident is inconsistent with other witnesses interviewed.” Memo from James Finn to Valencia Colleton (May 7, 1992). A USDA Report of Investigation, dated February 27, 1992, likewise detailed alleged violations of the AWA, including giving false information to an animal care inspector, and noted that “[t]his investigation has taken a long period of time to assemble the information submitted . . . in part . . . due to Antle presenting false and misleading information.” USDA, Report of Investigation, Case No. VA-91-022-AW (Feb. 27, 1992) (Ex. 50). In an internal memorandum, dated two weeks earlier, the USDA inspector detailed attempts to investigate the whereabouts of animals who were possibly being kept at Antle’s facility and reported that “Antle declined to name a specific caretaker at his facility and even went so far as to submit an affidavit declining to name a caretaker.” Memo re Additional Information to Support VA Case VA-91022-AW (Feb. 12, 1992) (Ex. 51).

And, on October 9, 1991, after a lion being used by Antle attacked and bit a woman in the head, local police found him attempting to flee the scene. Police Department Initial Investigation Report 3 (Oct. 9, 1991) (Ex. 52). Antle claimed that “he did not know what the big deal was about” and that he was in a hurry to leave because “he did not want to get invol[v]ed with the press.” *Id.* Antle told the police that the lion had been vaccinated for rabies, *id.*, but the officer learned that this was false when the attending physician at the hospital, where the model was admitted, informed him that no rabies vaccination for lions existed, *id.* at 4. The police were forced to put out a bulletin to be on the lookout for Antle’s vehicle after all attempts to contact him and his business were futile. *Id.* at 4-5. The department also received information from the dispatcher at the Buckingham, Va., Sheriff’s Department that Antle was operating under suspension in Virginia and was “of questionable character.” *Id.* at 5.

In addition to apparently providing false information to various agencies, the USDA noted several times in 1990 and 1991 that Antle was apparently exhibiting animals without the required AWA license. *E.g.*, Alleged Violation of Kevin Antle (Dec. 5, 1990); Request for

Investigation (Jan. 14, 1991) (Ex. 53); Memo re Alleged Violation of the AWA 1 (Apr. 26, 1991) (Ex. 54); Memo from Luis G. Rivera, Investigation Specialist, Regulatory Enforcement, USDA, to Thomas M. Walsh, Asst. General Counsel, Office of the General Counsel, Marketing Division, USDA (May 16, 1991) (Ex. 55). According to one internal USDA document, “[e]vidence . . . shows that Mr. Antle is operating as an exhibitor as defined in the AWA without having obtained a license. . . . It is apparent that Mr. Antle has no respect towards the AWA and regulations since he has continued to ignore the instructions given to him by USDA officials.” Memo from Luis G. Rivera to Thomas M. Walsh (May 16, 1991). In another, discussing complaints that Antle had been exhibiting tigers in Tennessee without a license, the investigator closed by stating, “I am concerned about the well-being of these animals. In this case, I am perhaps more concerned about the safety of the public. Some very dangerous animals are involved. Mr. Antle seems to pay no attention to what I tell him.” Alleged Violation of Kevin Antle 3 (Dec. 5, 1990). Mere weeks before he finally received an AWA license, a USDA inspector noted, on May 7, 1991, that Antle “ha[d] failed to meet all the standards for licensing.” USDA Inspection Reports 94.

One of the specific conditions of the requested ESA permit is that the permittee “maintain complete and accurate records,” which must be “available for inspection.” 50 C.F.R. § 13.46; *see also id.* § 13.47 (providing that permit holders must allow inspectors to “copy any permits, books, or records required to be kept” at “any reasonable hour”). Yet, providing access to investigators and maintaining complete and accurate records are just two of the many administrative requirements that T.I.G.E.R.S. and Antle have a long history of disregarding. Since 1988, for example, the USDA has cited T.I.G.E.R.S. or Antle more than two-dozen times for such violations, including:

- The USDA cited T.I.G.E.R.S. or Antle for failure to provide access to inspectors on April 23, 2015; June 8, 2010; July 16, 1993; March 21, 1991; March 9, 1990; and December 27, 1989. USDA Inspection Reports 2, 8, 43, 95-96, 99-100, 104. In December 1989, a USDA inspector visited Antle’s Virginia facility and found no one on the premises or evidence of recent activity. Undisturbed snowfall allowed the inspector to determine that no one had been at the facility for at least nineteen days. USDA Report of Alleged

Violations of 9 C.F.R., Part 2 and Part 3, Case No. VA-015-AW, at 1 (Aug. 21, 1990) (Ex. 56).

- On June 29, 2005, the USDA cited TIGERs for failure to document an appropriate environmental-enhancement plan for the nonhuman primates. USDA Inspection Reports 16.
- On October 21, 2003, the USDA cited T.I.G.E.R.S. for failure to maintain up-to-date animal records. *Id.* at 18.
- On August 4, 2003, the USDA inspector noted that several species present at T.I.G.E.R.S. during the inspection were not listed on the program of veterinary care. *Id.* at 19.
- On September 9, 1999, T.I.G.E.R.S. was cited for failure to maintain accurate records on the animals. *Id.* at 23.
- On April 13, 1999, T.I.G.E.R.S. was cited for failure to prepare a written feeding plan for the big cats at the facility. *Id.* at 25.
- On October 7, 1998, the USDA cited T.I.G.E.R.S. for failure to maintain accurate records on the animals. *Id.* at 27.
- On December 18, 1997, the USDA cited T.I.G.E.R.S. for failure to review and update its primate environmental program. *Id.* at 29.
- On April 25, 1994, the USDA cited T.I.G.E.R.S. for failure to provide a copy of Antle's travel itinerary. *Id.* at 32.
- On January 26, 1994, T.I.G.E.R.S. was cited for failure to provide a copy of Antle's travel itinerary. *Id.* at 36.
- On July 14, 1993, T.I.G.E.R.S. was cited for failure both to maintain records and to provide a travel itinerary. *Id.* at 45.
- On April 12, 1993, the USDA cited T.I.G.E.R.S. for failure to maintain and provide records on his animals. *Id.* at 48.
- On March 2, 1993, the USDA cited T.I.G.E.R.S. for lack of identification records and no written program of veterinary care. *Id.* at 51-52.
- On February 21, 1993, the USDA cited T.I.G.E.R.S. for incomplete veterinary records. *Id.* at 54.

- On February 11-12, 1992, T.I.G.E.R.S. was cited for failure to correct noncompliant items cited in previous inspections, including failure to provide a copy of Antle's itinerary. *Id.* at 63.
- On January 22, 1992, an internal USDA memorandum noted that Antle was given an official warning for AWA violations, including failing to provide copies of his travel itinerary, which required the USDA to go through airport records to locate animals who had been shipped to Korea, and failing to notify anyone of a second site where he was exhibiting an elephant. Memo from Ronald S. Zaidlicz, DVM, Veterinary Medical Officer, APHIS, USDA, 1 (Jan. 22, 1992) (Ex. 57).
- On October 11, 1991, T.I.G.E.R.S. was cited for failure to maintain required records. USDA Inspection Reports 76.
- On July 16, 1991, T.I.G.E.R.S. was cited for failure to provide a copy of Antle's itinerary and to provide any records for inspection. *Id.* at 90.
- On August 14, 1989, the USDA issued an Official Notification and Warning of Violation of Federal Regulations to Antle for failure to provide travel itineraries and maintain records. USDA, Official Notification and Warning of Violation of Federal Regulations, VA-89-016-AW (Aug. 14, 1989) (Ex. 58). The notice stated that "[t]hese are reoccurring discrepancies." *Id.*
- On March 15, 1989, the USDA cited Antle for failure to provide records. USDA Inspection Reports 108-110.
- On June 17, 1988, the USDA cited Antle for failure to maintain complete records. *Id.* at 112.
- On March 24, 1988, the USDA cited Antle for failure to provide copies of either his records or travel itinerary. *Id.* at 118.

The fact that T.I.G.E.R.S.'s current application omits required details about animal mortalities during the last five years, *see* § IV.D, *supra*, suggests that T.I.G.E.R.S.'s inability to maintain complete and accurate records may not be in its past.

T.I.G.E.R.S. clearly cannot make the required showing of responsibility given its decades-long histories of contempt for animal welfare and the law. This is yet another ground on which the FWS must deny the requested permit.

**V. Conclusion**

For all of the reasons detailed above, PETA urges the FWS to deny T.I.G.E.R.S.'s application for the requested permit to export and re-import eighteen endangered tigers. 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 [AmandaSchwoerke@petaf.org](mailto:AmandaSchwoerke@petaf.org) or telephone to 203-815-5481.