



Animal Welfare Institute

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Public Comments Processing
Attn: FWS-R9-ES-2010-0086
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

Dear Sir or Madam:

RE: Comments on the proposed rule and 12-month petition finding to list all chimpanzees (*Pan troglodytes*) as endangered pursuant to the Endangered Species Act of 1973 (76 Fed Reg. 54423)

On behalf of the Animal Welfare Institute (AWI), please accept the following comments on the above-referenced U.S. Fish and Wildlife Service (USFWS or the agency) proposal to list all chimpanzees as “endangered” under the Endangered Species Act (ESA).

This proposal constitutes the USFWS’ 12-month finding on the petition and announces the agency’s finding that listing all chimpanzees as “endangered” is warranted. The proposal also serves as the agency’s 5-year review of the species. AWI strongly supports the rule as proposed: to eliminate the separate classification of captive versus wild chimpanzees under the ESA and to extend full protections afforded to endangered species to captive chimpanzees in the U.S. AWI agrees with the USFWS that the ESA does not allow for captive-held animals to be assigned separate legal status from their wild counterparts on the basis of their captive state.

Allowing for the continued exploitation of captive chimps under the current special rule is inconsistent with the purpose of the ESA, has contributed to the exploitation and abuse of the species, has undermined range state efforts to enforce national laws to protect the species, and does not further conservation of the species in captivity or in the wild. Ultimately, listing all individuals of the species *Pan troglodytes*, whether they live in the wild or in captivity, as “endangered” will better provide for their conservation under the ESA by prohibiting their commercial exploitation, restricting their use as laboratory animals, ending the interstate sale and trade of captive chimpanzees in the United States (hereafter US) as pets, and demonstrating to the world that the US is fully committed to the actions necessary to protect and recover chimpanzees.

Endangered Species Act (ESA) & Captive-Bred Wildlife (CBW) Regulations:

The ESA mandates that listing determinations be made solely on the best scientific and commercial data available.¹ The Act was amended to “prevent non-biological considerations from affecting listing decisions,” including the economic costs associated with protecting species.² Moreover, in keeping with the overall purposes of the statute, even where the best available scientific evidence leaves some doubt as to the status of the species, the Service is required to “give the benefit of the doubt” to the species.³

While some captive propagation efforts can benefit wild populations, the Service has recognized that “uses of captive wildlife can be detrimental to wild populations” and that regulations governing captive use of species should “strike the most favorable balance for conservation of wildlife.”⁴ To ensure that captive populations of listed species are managed for conservation purposes, the USFWS issued captive-bred wildlife (CBW) regulations granting permission to engage in activities otherwise prohibited by Section 9 with respect to non-native endangered or threatened animals that are born in captivity, but only if the purpose of such activity is to “enhance the propagation or survival of affected species.”⁵ The agency admonished that these activities should only be permitted when wild populations are sufficiently protected from unauthorized taking and when it can be shown that such activities would not be detrimental to the survival of the wild or captive populations of the species.⁶ The USFWS also explained its concern that the CBW registration system could be used for purposes that do not contribute to conservation, such as for pets, research, or entertainment that does not benefit the species.⁷ The USFWS also noted that the statute defined “take” to apply to all listed wildlife, “whether wild or captive.”⁸

History of Chimpanzee Split Listing:

Pursuant to Section 4(d) of the Act, the Service issued a “special rule” for the chimpanzee in 1976 when it was listed as “threatened” providing that all of the Section 9 prohibitions that apply to endangered species under the Act would also apply to the “threatened” chimpanzee. This special rule provided that these prohibitions would not apply in the case of live chimpanzees held in captivity in the United States on the effective date of the rulemaking, the progeny of such chimpanzees or the progeny of chimpanzees legally imported into the United States after the effective date of the rulemaking.⁹

¹ 16 U.S.C § 1533(b)(1)(A).

² H.R. Conf. Rep. No. 97-835 at 19 (1982).

³ *Conner v. Burford*, 858 F.2d 1441, 1454 (9th Cir. 1988).

⁴ 44 Fed. Reg. at 30045 (May 23, 1979).

⁵ 44 Fed. Reg. 54002, 54007 (September 17, 1979).

⁶ 44 Fed. Reg. at 54002.

⁷ 57 Fed. Reg. 548, 550 (January 7, 1992).

⁸ 63 Fed. Reg. at 48636 (September 11, 1998).

⁹ 41 Fed. Reg. at 45993 (October 19, 1976).

On March 12, 1990, the USFWS published a final rule to reclassify wild chimpanzees as “endangered,” but to maintain the “threatened status for captive chimpanzees.”¹⁰ The USFWS also revised its “special rule” to clarify that while all “endangered” wild chimpanzees would receive the protections of the ESA, none of them would apply to the “threatened” chimpanzees held in captivity in the U.S.¹¹ The agency decided to maintain the “threatened” status with none of the protections afforded under the ESA for those captive individuals on the grounds that the chimpanzee is “considered to be of much importance in biomedical and other kinds of research... and for use by zoos, as pets and in entertainment.”¹² In fact, exempting exploitation of chimpanzees in captivity was primarily done to facilitate biomedical research.¹³ Incidentally, the Service also stated that to the extent that self-sustaining breeding groups of captive chimpanzees provide surplus animals for research and other purposes, there may be reduced probability that other individuals of that species will be removed from the wild.¹⁴

Threats to Chimpanzee Conservation from Split Listing:

There is overwhelming scientific and commercial evidence, as documented in the petition, that the current “threatened” status of captive chimpanzees has led to pervasive exploitation of this species. The existing regulatory scheme provides that the “take” prohibition of the ESA does not apply to captive chimpanzees residing in the U.S., resulting in the species being used for commercial purposes including entertainment (i.e., television shows, television advertisement, print advertisement, private and public chimpanzees shows, opportunities for people to be photographed with chimpanzees, all of which require abusive treatment of the animals), pet ownership (involving intra and interstate sales of chimpanzees, irresponsible breeding), and invasive biomedical research. The net effect of permitting and tolerating such exploitation of captive chimpanzees in the U.S. is directly undermining international, domestic, and range country conservation efforts to save the species from extinction.¹⁵

In the U.S., captive chimpanzees are in zoos (both accredited and roadside operations), private homes, “sanctuaries,”¹⁶ commercial dealers, and experimental laboratories. With the apparent exception of “accredited” zoological parks, the other entities that possess captive chimpanzees are often interlinked through intra and interstate sales. Animal menagerie owners engaged in the

¹⁰ The Service asserted that “to the extent that self-sustaining breeding groups of captive *P. troglodytes* provide surplus animals for research and other purposes, there is a reduced probability that other individuals of that species will be removed from the wild.” 54 Fed. Reg. 8152-53 (February 24, 1989).

¹¹ 55 Fed. Reg. 9129 (March 12, 1990); 50 C.F.R. § 17.40(c).

¹² 55 Fed. Reg. at 9130 (March 12, 1990).

¹³ Memorandum to the Director from Regional Director, Region 8 (Nov. 16, 1988) at pg. 2; *see also* 54 Fed. Reg. at 8152.

¹⁴ 55 Fed. Reg. at 9130 (March 12, 1990).

¹⁵ Common depictions of chimpanzees wearing suits and ties on television, in movies and in other forms of advertising decrease the species’ chance of success in the wild, research has shown. After viewing the chimpanzees’ appearances, viewers were found to be less likely to contribute to their conservation, according to a Duke study published in the journal PlosOne on Oct 12, 2011. *See* The Chronicle, *Chimpanzees’ public profile belies endangered status*, available at <http://dukechronicle.com/article/chimpanzees-public-profile-belies-endangered-status> (October 20, 2011).

¹⁶ There are a number of sanctuaries in the U.S. that maintain captive chimpanzees. Not all sanctuaries are cut from the same cloth as some are credible and provide excellent care for the chimpanzees in their facilities, while the care provided by other sanctuaries is often lackluster.

irresponsible breeding of chimpanzees have the ability, given the inadequacy of existing U.S. laws, to unload unwanted animals through sale to the pet or entertainment industries. Young chimpanzees can be exploited for years as pets or as entertainment props before they grow to such a size and strength that they then become dangerous. At that stage, the animals can be sold back to menageries or to the laboratory animal industry.

Entertainment, Breeding and Pets:

Chimpanzees used in the commercial entertainment industry are subject to exhibition, used as props for photographs, forced to perform on the big and small screen, used in print advertisements, and used to perform in animal acts/circuses due to the species allure as humans' closest living relative, their human-like features, the "cuteness" value of younger animals, and the species overall popularity. The petition provided an abundance of examples of captive chimpanzees used in the entertainment industry.

As documented in the petition, methods used in order to get chimpanzees to perform can be brutal and often involve routine beatings, removal of teeth to reduce likelihood of a dangerous attack, food and water deprivation, and forcing the animals to perform acts that are frequently entirely unnatural. Minus a special exemption for captive chimps, these acts are in contravention of the ESA. Under Section 9 of the statute, it is unlawful to take, import, deliver, receive, carry, transport, or ship any endangered species into the United States or in interstate or foreign commerce.¹⁷ Take includes "harass, harm, pursue, hunt, shoot, wound, kill, capture or collect."¹⁸ The USFWS has further defined the term "harass" to mean "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering."¹⁹ The agency further found that "maintaining animals in inadequate, unsafe or unsanitary conditions, physical mistreatment, and the like constitute harassment because such conditions might create the likelihood of injury or sickness."²⁰ Such measures only include a "regulated taking" of the species in the "extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved."²¹

Clearly, the petition demonstrates that many of the conditions that constitute harassment under the ESA are present for captive chimpanzees. Under Section 4(d) of the statute, a "special rule" was implemented for captive chimpanzees depriving them of prohibitions on take otherwise afforded to endangered species. However, special rules under Section 4(d) which govern a particular threatened species must also provide for the conservation of the species, i.e. its recovery in the wild.²² Such a special rule was promulgated by the USFWS for chimpanzee (as detailed below) but it has failed to provide for the conservation of the species.

¹⁷ 16 U.S.C. §§ 1538(a)(1)(A)-(E).

¹⁸ 16 U.S.C. § 1532(19).

¹⁹ 50 C.F.R. § 17.3.

²⁰ 63 Fed. Reg. at 48638.

²¹ *Id.*

²² 16 U.S.C. § 1533(d); *See also Sierra Club v. Clark*, 577 F. Supp. 783 (D.Minn. 1984); *See also Fund for Animals v. Turner*, 1991 WL 206232 (D.D.C. 1991).

Roadside animal menageries and some private chimpanzee owners also routinely breed chimpanzees knowing full well that baby or juvenile chimpanzees are of far greater value – for exhibition or for sale – than adult chimpanzees. This breeding is done without any concern of genetics, resulting in offspring that will have no conservation value in terms of providing for the recovery of the species in the wild. Furthermore, the use of chimpanzees in entertainment has, given the fact that these are wild and unpredictable animals, resulted in incidents where the chimpanzees have lashed out at their trainers, keepers, handlers, or others on the production set or at the performance venue thereby representing a threat to both public safety and to the well-being of the captive chimpanzees. Because many trainers rely heavily on beating chimpanzees into submission to transform them into entertainers, these animals have behavioral abnormalities that can be a threat to public safety. For example, in February 2009, Stamford, Connecticut police shot and killed a 14 year-old, 200 pound chimpanzee (“Travis”) that had previously starred in commercials after he brutally mauled his owner’s friend, Charla Nash. Travis tore Charla’s face and caused horrendous injuries, severing her nose, ears, and hands and severely lacerating her face. Nash also lost her eyes, lips, mid-face bone structure, and received significant brain tissue injuries.²³ In another incident, St. James Davis survived a horrific attack by chimpanzees at a California wildlife rescue center in March 2005 after having his nose, mouth, and eye ripped out, his left foot mangled, and other body parts devoured. He has since undergone more than 60 surgeries.²⁴

In addition, the exhibition and use of chimpanzees is not serving to educate the general public on the plight of the chimpanzees. Conversely, seeing chimpanzees regularly displayed in movies, on television, and/or in advertisements encourages the notion that the species is not in trouble. Multiple studies confirm that when people see chimpanzees portrayed in these unnatural entertainment depictions, they acquire misperceptions of the species that undermine legitimate conservation efforts by fueling demand for pet chimpanzees and reinforcing negative conservation attitudes. In two related studies conducted in 2005 (at the Regenstein Center for African Apes at the Lincoln Park Zoo in Chicago) and in 2006 (at the Great Ape Trust of Iowa), surveys were conducted to determine visitor knowledge of the population status of great apes. While nearly all of those surveyed correctly classified orangutans and gorillas as endangered, only 66 and 72 percent of those surveyed in each study correctly identified chimpanzees as endangered. For those who did not consider chimpanzees to be endangered, their perspectives were directly linked to the use of chimpanzees in the media (e.g., in television, advertisements and movies) and the ability to keep chimpanzees as pets.²⁵

Research has shown that common depictions of chimpanzees wearing suits and ties on television, in movies and in other forms of advertising decrease the species’ chance of survival and recovery

²³ Andy Newman, *Pet Chimp Is Killed After Mauling Woman*, N.Y. TIMES, at A30 (February 17, 2009); Anahad O’Connor, *Woman Mauled by Chimp Has Surgery, and Her Vital Signs Improve*, N.Y. TIMES (February 19, 2009).

²⁴ Schapiro, Rich, *The Worst Story I Ever Heard*. Esquire, available at <http://www.esquire.com/features/chimpanzee-attack-0409> (April 2009).

²⁵ K.E. Lukas & S.R. Ross, *Zoo Visitor Knowledge and Attitudes Toward Gorillas and Chimpanzees*, J. OF ENVTL. EDUC. vol. 36, no. 4 (2005) (emphasis added); See also Steve Ross, *Not a Laughing Matter: Conservation Effects of Media Portrayals*, CONNECT, 25-26 (September 2008); See also Stephen R. Ross et al., *Inappropriate Use and Portrayal of Chimpanzees*, SCIENCE vol. 319, 1487 (2008).

in the wild. For example, after viewing images of chimpanzees' used in televised advertisements, viewers were found to be less likely to contribute to their conservation, according to a recent study and were far more likely to support keeping chimpanzees as pets.²⁶ To test this argument, Kara Schroepfer at Duke University in Durham, North Carolina, asked 165 people to fill out a questionnaire about the status of chimpanzees in the wild after watching a series of television ads. The ads showed products such as toothpaste and soft drinks. Mixed in with the ads was one of three short films about chimpanzees. One showed Jane Goodall delivering a message about the need to protect chimpanzees; another was simply footage of chimpanzees in the wild; and the third showed chimpanzees wearing clothes and "acting" in ads intended to be humorous.²⁷

After watching the ads, the participants filled out a questionnaire that assessed their understanding of the status of wild chimpanzees. The scientists' analysis of the results showed absolutely "no support for the familiarity hypothesis," Hare says. Indeed, more than 35% of those who watched the humorous ads came away thinking that individuals should have the right to own a chimpanzee as a pet, compared with only 10% of those who watched the two other films. The participants were also given the opportunity to purchase one of the products they had seen or contribute part of their compensation for the experiment to a conservation charity; those who watched the entertainment chimps were the least likely to donate.²⁸

The team's findings add to the evidence that using chimpanzees and other primates in entertainment "is more than just frivolous amusement; it really changes the way the public understands the species and should be discontinued," says Stephen Ross, a chimpanzee researcher at the Lincoln Park Zoo. The study adds to "a growing body of work that indicates that conservation is directly tied to public perception," says Doug Cress, a spokesperson with the Great Apes Survival Partnership in Nairobi. He and others in conservation "have always felt that the use of [great apes and primates] in entertainment somehow undermined" preservation efforts. "After all, who could look at a chimpanzee on a unicycle and comprehend its real situation?"²⁹

This is in direct contravention of the ESA's definition of "conserve" as "to use all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary."³⁰ This recent study indicates that the exhibition of captive chimpanzees is now working directly against their conservation, indicating that an uplisting and full ESA protection is necessary for all chimpanzees in order to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

²⁶ Schroepfer KK, Rosati AG, Chartrand T, Hare B (2011) *Use of "Entertainment" Chimpanzees in Commercials Distorts Public Perception Regarding Their Conservation Status*. PLoS ONE 6(10): e26048.

doi:10.1371/journal.pone.0026048.

²⁷ *Id.* at 2.

²⁸ *Id.* at 3.

²⁹ Morell, Virginia, *Cute TV Chimps May Harm Their Wild Kin*, Wired Science, available at <http://www.wired.com/wiredscience/2011/10/clothed-chimpanzees-protection/> (Oct. 13, 2011).

³⁰ 16 U.S.C. § 1532(3).

Private ownership of chimpanzees is another significant problem in the U.S. Unfortunately, private ownership often results in significant abuse and neglect of the chimpanzees while posing significant risks to the human. Baby chimpanzees grow quickly and become very powerful and dangerous animals, regardless of the care taken in how they are raised. As a result, they are often kept in small enclosures, cages or pens, and owners will sometimes have their teeth removed to prevent biting. These animals often suffer prolonged neglect and sometimes eventual abandonment because a majority of owners simply are not capable of providing them with the physical space or the stimulation that is needed to maintain their physical and psychological health.

Furthermore, as demonstrated time and again, including several high profile incidents in recent years, captive chimpanzees pose a significant public safety threat.

Biomedical Research:

Over 1,000 chimpanzees are also kept in biomedical research laboratories in the U.S. This type of exploitation also has negative impacts on both individual chimpanzees and the species as a whole, and the U.S. stands alone as the only nation actively engaged in biomedical research on chimpanzees.³¹ Countries such as the United Kingdom, Sweden, the Netherlands, and Austria have all banned experiments on great apes, while others have simply discontinued biomedical research on the species.

The U.S. has a long history of poor care, mistreatment and outright abuse of chimpanzees that are experimented on in facilities such as New Iberia, Coulston and Charles River. For example, the Coulston Foundation once housed over 600 chimpanzees and was closed in 2002 following numerous violations of the Animal Welfare Act for inhumane treatment, including negligent deaths of chimpanzees and failure to provide adequate veterinary care for chimpanzees. A nine-month undercover investigation conducted in 2008 alleged hundreds of violations of the Animal Welfare Act involving chimpanzees and other non-human primates at the New Iberia Research Center in Louisiana.

The vast majority of these chimpanzees are not being used in research protocols, but are simply warehoused. Some chimpanzees have spent decades and in essence a lifetime (half a century or more) in the laboratory. Nearly all of those now in laboratories have endured repeated assault by laboratory technicians administering anesthesia with a dart gun, known as a “knock down.” Clinical records indicate that a chimpanzee held for decades in a lab has suffered as many as three or four hundred such knock downs. These chimpanzees experience severe stress, panic and terror during these procedures, often self-mutilating and living in a state of constant fear and hyper vigilance.³²

³¹ Chimpanzees contain a genetic profile that is 98 percent like humans. Scientific American, *What does the fact that we share 95 percent of our genes with the chimpanzee mean?* Available at <http://www.scientificamerican.com/article.cfm?id=what-does-the-fact-that-w> (March 1, 2004).

³² See, e.g., G.A. Bradshaw et al., *Building an Inner Sanctuary: Complex PTSD in Chimpanzees*, J. OF TRAUMA AND DISSOCIATION vol. 9, no. 1, 9-34 (2008).

The lack of protections afforded captive chimpanzees under U.S. laws allows much of this abuse and exploitation to continue virtually unabated. Indeed, despite the “threatened” status of chimpanzees in the U.S., federal laws do not even allow the USFWS to possess an accurate accounting of all chimpanzees in the country. Laboratories are permitted to acquire chimpanzees that were born outside of research facilities because the split-listing of the species does not prohibit interstate commerce between private owners. While reporting requirements under the CBW registration and Animal Welfare Act rules provide some information about those public and private entities that maintain chimpanzees and the number of animals in each facility, those that do not display and breed chimpanzees are not currently required under federal law to account for their animals.

Whereas the definition of “conserve” within the ESA refers to bringing an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary, the 1990 split-listing actually facilitates exploitation that harms individual chimpanzees and the species as a whole. Realistically, the special regulation for the “threatened” captive members of the species has only ensured that these chimpanzees are subject to abuse, not contributed to their conservation.

Notwithstanding the direct and indirect impacts of captive chimpanzees on the conservation and recovery of wild chimpanzees (as discussed below), the evidence presented in the petition demonstrates that captive chimpanzees qualify for an uplisting. Existing regulatory mechanisms have been inadequate at preventing captive chimpanzees from being overexploited for commercial purposes.

Chimpanzees in the Wild:

Though there is considerable evidence demonstrating that the ESA designation of captive chimpanzees in the U.S. must be uplisted to “endangered,” the impact of the exploitation of captive chimpanzees on the status and recovery of wild chimpanzees provides indisputable justification for an uplisting. Simply put, the split-listing of chimpanzees has done nothing to advance protections and recovery of wild chimpanzees. Past decisions by the USFWS to deny provide meaningful protections to “threatened” captive chimpanzees has undermined wild chimpanzee conservation efforts and encouraged the ongoing black market trade in juvenile chimpanzees. This provides an economic incentive for the illegal hunting and killing of wild chimpanzee families. Indeed, depriving captive chimpanzees of protection in the U.S. contributes to the further endangerment of wild populations by fueling demand for poaching and illegal trafficking.

As the world becomes more globally connected, American movies, television, and advertisements (print and television) are being seen by people throughout the world. As a consequence, even though there has not been a legal import of a live chimpanzee into the U.S. for years, these images are contributing to an increased demand for chimpanzees as pets. Such demand is increasing in countries where enforcement of trade restrictions of the species are lax thereby allowing for the illegal trade in juvenile chimpanzees ripped from the wild after their families are killed. Indeed, the growing demand for the pet industry only adds to the incentive to

poach chimpanzees from the wild. It is estimated that five to ten chimpanzees die for every one that is delivered alive to an overseas buyer.³³

The lack of substantive protection for captive chimpanzees in the U.S. is also undermining the efforts and influence of the U.S. government in promoting increased protection of wild chimpanzees and/or more stringent enforcement of laws protecting chimpanzees in their range states. It is difficult for U.S. officials to convince or compel their African counterparts, for example, to expend finite resources and to risk the lives of their law enforcement personnel to enforce laws protecting chimpanzees and their habitat when captive chimpanzees in the U.S. are routinely sold for commercial gain, exploited for profit by the U.S. entertainment/advertising industries, and kept as pets in U.S. households. Consequently, as reported in the petition, there is an indisputable link between the lack of meaningful protection and exploitation of captive chimpanzees in the U.S. and diminishment of efforts to protect and recover chimpanzees in the wild.

As documented in the petition and supplemented below, all subspecies of wild chimpanzees are in decline, thereby placing the entire species at an increased risk of extinction. In the last thirty years, the chimpanzee population is estimated to have fallen by 66 percent. The global population which numbered around one million a hundred years ago is now estimated at only 172,000-300,000 and chimpanzees have gone locally extinct in 4 out of 25 of their historical range countries.³⁴ With these small numbers left in the wild and about 250 individuals in zoos in the United States, chimpanzees are among the most threatened primates in Africa for many reasons. If current trends continue, it is expected that chimpanzees and other great ape populations will decrease an additional 80% over the next 30-40 years.³⁵ Central chimpanzees are the most numerous, with about 80,000 found in Gabon and Congo, eastern chimpanzees number about 13,000 though the estimates from DRC are very rough, and western chimpanzees are very patchily distributed with no more than 12,000 remaining.³⁶ Several synergistic factors have led to the decrease in chimpanzee populations across Africa and some of the most salient threats include hunting, habitat loss and degradation due to industrialized logging and human population growth, and disease.³⁷ Even in Gabon and Congo, widely considered stronghold countries for chimpanzees, populations are declining at a rate of at least 4.7% per year.³⁸ And today, the total population of Nigeria-Cameroon chimpanzees may number as few as 3,500.³⁹

Chimpanzees are subject to multiple threats in Africa. While the most significant threats causing the decline in the population of wild chimpanzees are habitat loss and illegal wildlife trade (both

³³ 55 Fed. Reg. 9129 at 9133 (1990).

³⁴ The Jane Goodall Institute, *State of the Wild* at <http://www.janegoodall.org/chimpanzees/state-wild-chimpanzee>.

³⁵ *Id.*

³⁶ Oates 1996. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1

³⁷ Kormos 2003; Walsh et al. 2003; Poulsen & Clark 2004. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1

³⁸ Walsh et al. 2003. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1

³⁹ IUCN/SSC Primate Specialist Group and Zoological Society of San Diego, *Regional Action Plan for the Conservation of the Nigeria-Cameroon Chimpanzee (Pan troglodytes ellioti)* (2011).

for bushmeat and the pet trade),⁴⁰ other threats include political instability, governmental corruption, wildlife law enforcement inadequacies, human population growth and subsequent expansion of human occupation of chimpanzee habitat, disease, land conversion for agriculture, refugee settlement in chimpanzee habitat, and climate change. These threats are increasing, not declining. Human population growth in chimpanzee range states is increasing exponentially. This, in turn, inevitably results in the need for more food, land, and development to accommodate the needs of the expanding human population. Chimpanzees and their habitat (along with other wild species) will be the victims of this human population explosion.

A number of factors are directly contributing to chimpanzee habitat loss. While legal and illegal timber harvest is certainly a significant factor causing the decline in wild chimpanzee populations, it is not the only threat to chimpanzee habitats. Mining, conversion of forest to agricultural production, and human encroachment are all, individually and cumulatively, resulting in the massive and ongoing loss and degradation of chimpanzee habitat. According to the United Nations, Africa lost 64 million hectares of forest between 1990 and 2005, almost half in chimpanzee range countries.⁴¹ In addition, slash and burn agriculture, causing deforestation across West and Central Africa, has severely reduced chimpanzee habitats. It is estimated that more than 80% of the region's original forest cover has been lost.⁴² And in western Central Africa, selective logging is, or will be, carried out in the majority of forests outside of national parks.⁴³

The illegal trade in chimpanzees includes trade in chimpanzee meat and other body parts (hereafter generally referred to as the "bushmeat trade"), and the trade in captured or orphaned juvenile chimpanzees. The bushmeat trade and trade in orphaned chimpanzees are inextricably intertwined as poachers kill adult chimpanzees for their meat which also facilitates the capture of juvenile chimpanzees. The orphans are then, if they even survive the capture and subsequent days to weeks of substandard care and neglect, subsequently sold in domestic markets or illegally exported to satiate the demand for pet chimpanzees – a demand, as explained previously, that is directly linked to the use of captive chimpanzees for entertainment and advertising in the U.S. As human populations expand in Africa, there is an increasing demand for meat, including meat from wildlife. As a consequence, the bushmeat trade is decimating Africa's wildlife, leading to what some experts refer to as "empty forest syndrome," whereby a forest may exist but it is largely devoid of wildlife.⁴⁴ As more common species decline, those

⁴⁰ Bailey, Natalie, *Effects of Bushmeat Hunting on Populations of African Great Apes*, at <http://www.bushmeat.org/sites/default/files/Great%20Apes%20Table.pdf> (accessed Sept. 2011).

⁴¹ United Nations Food and Agriculture Organization, *Global Forest Resource Assessment 2005*. Chimpanzee range countries with the greatest loss in forest cover between 1990 and 2005 include The Democratic Republic of the Congo (~6.9 million hectares), Nigeria (~6.1 million hectares), and Cameroon (~3.3 million hectares).

⁴² Kormos *et al.* 2003. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

⁴³ Plumptre and Johns 2001, White and Tutin 2001. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

⁴⁴ Wildlife Conservation Society & Bushmeat Crisis Task Force: Bennett, Elizabeth, Eves, Heather, Robinson, John, Wilkie, David. *Why is Eating Bushmeat a Biodiversity Crisis?* Available at <http://isc.temple.edu/economics/wkpapers/Bushmeat/Articles/bushmeat%20Mar%2019.pdf>. Conservation Biology in Practice, Winter 2002/Vol.3 No. 1.

species that are rarer or more difficult or dangerous to kill (including chimpanzees) are more likely to be pursued to satiate the demand for bushmeat.

Commercial hunting of great apes for bushmeat is one of the biggest threats facing the great apes⁴⁵ and most of the bushmeat trade is illegal.⁴⁶ Commercial bushmeat hunters illegally shoot and butcher thousands of endangered great apes using guns and special wire snares.⁴⁷ All great ape species are subject to this threat and are killed and eaten as bushmeat and body parts are used in traditional medicine. Bushmeat demand from local populations, especially in Cameroon, Gabon, Kenya, Tanzania, and Ghana,⁴⁸ increased to a point where international leaders declared a bushmeat crisis⁴⁹ because it is at a rate beyond the ability for great apes to sustain themselves, especially with financial rewards to bushmeat poachers often higher than working in legal sectors. Chimpanzees currently constitute 1 to 3% of bushmeat sold in urban markets in Côte d'Ivoire.⁵⁰

There is also an inextricable link between extractive industries and the bushmeat trade. Timber and mining companies often set up camps to facilitate extraction of the relevant resources. Those employed by the industry then hunt to satiate their own needs or the needs of others. In either case, wildlife species are harmed. Furthermore, both industries, by creating roads and making other infrastructure improvements, facilitate the expansion of human civilization into the industry-affected areas and/or provide roads by which poachers can more easily access areas that may have previously been too remote or too difficult to access. Those same roads, traversed by industry trucks, provide a quick and relatively inexpensive means for poachers to transport their goods to regional cities if not to larger markets in the nation's capital. Hicks et al. (2010), for example, documented a substantial increase in chimpanzee meat and orphans sold south of the Uele River in the Democratic Republic of the Congo that was linked to an expansion of extractive industry (mining) in the region and fed by the region's large human population.⁵¹

In addition, the main cause of death in chimpanzees at Gombe, Mahale and Tai is infectious disease.⁵² Given the genetic similarity between chimpanzees and humans, chimpanzees succumb to many diseases that afflict humans.⁵³ The frequency of encounters between chimpanzees and

⁴⁵ Kormos et al. 2003. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1

⁴⁶ Save the Primates, *The Bushmeat Trade – Threat of Primate & Wildlife Extinction*, <http://www.save-theprimates.org.au/facts-bushmeat-trade.htm> (last visited Apr. 18, 2010).

⁴⁷ The Bushmeat Project, *About Bushmeat*, <http://bushmeat.net/about.html> (2008).

⁴⁸ World Wildlife Fund, *WWF African Bushmeat Programme*, http://www.panda.org/who_we_are/wwf_offices/cameroon/index.cfm?uProjectID=9F0739 (Sept. 4, 2009).

⁴⁹ *The Bushmeat Crisis in Africa: Conciliating Food Security and Biodiversity Conservation in the Continent, Report of the Twenty-Third Regional Conference for Africa*, Johannesburg, South Africa (Mar. 1-5, 2004), <http://www.fao.org/DOCREP/MEETING/007/J1457E.HTM> (last visited Apr. 18, 2010).

⁵⁰ Caspary et al. 2001. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

⁵¹ Hicks, T.C., L. Darby, J. Hart, J. Swinkels, N. January, and S. Menken. 2010. Trade in Orphans and Bushmeat Threatens one of the Democratic Republic of the Congo's Most Important Populations of Eastern Chimpanzees (*Pan troglodytes schweinfurthii*). *African Primates* 7(1):1-18.

⁵² Goodall 1986, Nishida et al. 2003, Hanamura et al. 2006). *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

⁵³ Butynski 2001. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

humans and/or human waste is increasing as human populations expand, leading to higher risks of disease transmission between humans and chimpanzees. If not properly managed, research and tourism also presents a risk of disease transmission between humans and chimpanzees. In the past 15 years, Ebola haemorrhagic fever has killed chimpanzees in Côte d'Ivoire⁵⁴ and repeated epidemics have caused dramatic declines of ape populations in remote protected areas in Gabon and the Republic of Congo.⁵⁵

The USFWS is mandated to recover listed species. As evidenced in the petition, there is considerable evidence that the current split-listed status of chimpanzees has not met the legal requirements imposed by the ESA; specifically, recovery of the chimpanzee has not occurred and the status of the chimpanzee in the wild has declined. Though the USFWS has designated wild chimpanzees as “endangered” and has, through its international actions including advocating for greater protections for chimpanzees and their habitat in Africa, calling for increased law enforcement efforts to clamp down on those threats to wild chimpanzees, and supporting capacity building programs to benefit wild chimpanzees (and other species), these efforts continue to fall short of recovery. The USFWS must do more.

While the legal jurisdiction of the USFWS does not extend beyond the U.S., its territories, and waters within its Exclusive Economic Zone preventing it from being able to directly compel a reduction in, for example, timber harvest in chimpanzee habitat or in chimpanzee poaching for the bushmeat and pet trades, it can further the recovery of wild chimpanzees by increasing protections for captive chimpanzees in the U.S. By proceeding with the publication of a proposed rule to uplist captive chimpanzees to “endangered” under the ESA, the USFWS will address the exploitive uses of captive chimpanzees that have contributed to the ongoing decline in wild chimpanzee populations.

AWI applauds the USFWS limiting legal import of a wild chimpanzee into the U.S. and recognizes the efforts made by the U.S. to prevent the illegal import of live chimpanzees, their meat, or other body parts into the U.S. However, if it does not act to prevent the continued sale and exploitation of captive chimpanzees as pets or for entertainment/advertising considering the evidence (cited in the petition and above) of the link between such exploitation and the decline in wild chimpanzees, then it is just as culpable as the illegal logger or poacher in Africa in contributing to the demise of wild chimpanzees.

Section 10 Permitting & Loopholes

Section 10 of the ESA provides exceptions for activities otherwise prohibited by section 9. For example, Section 10(a)(1)(A) authorizes the USFWS to issue permits for scientific purposes or to enhance the propagation or survival of species listed as endangered. However, this permitted activity must not operate to the disadvantage of the species and must be consistent with the purposes and policy set forth in section 2 of the ESA. In addition, section 7 consultation must always be conducted prior to issuance of a section 10(a)(1)(A) permit.

⁵⁴ Formenty 1999. *Pan troglodytes*. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

⁵⁵ Huijbregts *et al.* 2003; Walsh *et al.* 2005, P. Walsh, unpubl. In: IUCN 2011. IUCN Red List of Threatened Species. Version 2011.1.

The ESA defines the term “commercial activity” as “*all* activities of industry and trade, *including, but not limited to*, the buying or selling of commodities and activities conducted for the purposes of facilitating such buying and selling.”⁵⁶ In September 1975, the USFWS promulgated 50 C.F.R. § 17.3, which defined “industry and trade” in the definition of “commercial activity” to mean “the actual or intended transfer of wildlife or plants from one person to another in the pursuit of gain or profit.” This narrow interpretation of “commercial activity” would undoubtedly prohibit interstate commerce between private chimpanzee owners whenever there is an actual transfer of ownership in exchange for money, including the common scenario where research laboratories, as well as private sanctuaries and zoos, purchase chimpanzees from out-of-state pet and entertainment owners. However, this narrow interpretation does not cover many other commercial uses of captive chimpanzees in the United States because there is often no transfer of ownership.

If the USFWS lists the captive group of chimpanzees in the U.S. as “endangered,” then the agency should promulgate a rule that broadens its interpretation of “commercial activity” to include other commercial uses of captive chimpanzees in the United States that currently fall outside the definition of commercial activity, such as chimpanzees leased for entertainment purposes.

In addition to removing the split-listing status for chimpanzees, the CBW permit process as currently set forth in 50 C.F.R. § 17.21(g) must be revised to ensure that captive chimpanzees are no longer threatened by exploitation for the pet trade and entertainment industries in the U.S. A CBW permit effectively allows for a taking otherwise prohibited under the ESA. AWI vehemently objects to the USFWS allowing certain activities (such as donations) to offset actions in association with section 10 permitting that do not serve a conservation purpose. It is essential that the Service only authorize otherwise prohibited activities when a case-by-case analysis confirms that the activity will positively benefit the survival of the species in the wild and will not be harmful in any way to the survival of wild or captive populations of the species. The fact that the ESA does not differentiate between captive and wild endangered species in the kinds of protections afforded to each suggests that CBW permits should be granted sparingly and only when clearly necessary. Otherwise, there is little practical difference between delisting captive species and listing captive species while generously granting CBW permits for them.

Finally, the USFWS should make findings on significant public comments received on each CBW permit application and publish their responses in the federal register.

Conclusion:

By listing captive chimpanzees separately from wild chimpanzees, the USFWS has created a double standard supporting conservation of the species in the wild while allowing for exploitation and trade of chimpanzees within U.S. borders. This has also perpetuated the misperception among the American public that this species is not in danger by allowing for their exploitation in the pet and entertainment industries. This inequity has created a problem of moral

⁵⁶ 16 U.S.C. § 1532(2) (emphasis added).

inconsistency that threatens not only the survival of the species but our ability to successfully promote conservation of chimpanzees in African range countries.

As the petition indicates, this failure to make any progress towards recovery may, in part, be the product of the lack of protection provided to captive chimpanzees in the U.S. Without such protections, chimpanzees continue to be subjected to intra and interstate trade, subject to sale for commercial gain, used in unnecessary and abusive experiments, and irresponsibly bred by private parties, including non-accredited zoos and menageries. Such exploitive uses of captive chimpanzees in the U.S. diminishes the political will for range states to seriously engage in conservation/recovery actions, creates a demand for chimpanzees to be used as pets or for entertainment in Africa and throughout the world leading to excessive poaching, and diminishes the influence of the U.S. in seeking more aggressive conservation and law enforcement efforts to protect wild chimpanzees and their habitat in Africa.

Designating captive chimpanzees in the U.S. as “threatened” and yet depriving them of the basic protections of the statute is contrary to the purpose of the ESA.⁵⁷ This problem should be remedied by repealing the current special rule for captive chimpanzees and listing all chimpanzees in the U.S. as “endangered.” Considering the evidence presented in the petition and referenced above, there is no question that legally the USFWS must proceed with listing all chimpanzees, wild and captive, as “endangered.”

However, AWI also encourages the USFWS to address its current interpretation of the ESA by broadening the definition of “commercial activity” and publish its findings in response to permit applications under the CBW registration system so that it fully protects chimpanzees from further harm.

Thank you in advance for providing this opportunity to comment on this proposed rule and for considering these comments. Please send any future correspondence or information about this proposed rule to: Tara Zuardo, Wildlife Attorney, Animal Welfare Institute, 900 Pennsylvania Ave., SE, Washington, DC 20003.

Sincerely,



Tara Zuardo
Wildlife Attorney

⁵⁷ “The Service has consistently maintained that the Act applies to both wild and captive populations of a species.”
44 Fed. Reg. 30044, May 23, 1979.