



Animal Welfare Institute

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January 30, 2012

BY ELECTRONIC AND REGULAR MAIL

Submitted via <http://www.regulations.gov>

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 Madame:

RE: Supplemental comments on the status review of the split-listing of chimpanzees (*Pan troglodytes*) to determine if both wild and captive chimpanzees should be designated 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 supplemental comments on the above-referenced U.S. Fish and Wildlife Service (hereafter FWS or the Service) decision to initiate a status review to determine if the full protections of “endangered” status under the Endangered Species Act (ESA) should be extended to all chimpanzees (hereafter status review). AWI submitted its initial comments on this status review on October 31, 2011.

AWI continues to maintain that it is unlawful for the FWS to maintain the “split-listing” scheme for *Pan Troglodytes* because treating captive chimpanzees held in the U.S. differently from populations in the wild violates the plain meaning of the ESA and is arbitrary and capricious, especially given previously submitted information that this split-listing does not promote (and is even detrimental to) the conservation of *Pan troglodytes* in the wild.

However, in these supplemental comments, AWI will focus on the findings of the recent Institute of Medicine report [attached], as well as Inspection Reports from the U.S. Department of Agriculture, to directly address several claims made by the American College of Laboratory Animal Medicine (ACLAM) and the Association of Primate Veterinarians (APV) regarding the necessity of captive U.S. chimpanzee use in biomedical research, the mental and physical health of primates used in biomedical research, and the legal impact of classifying all chimpanzees as “endangered” under the ESA.

I. Claim: There is substantial scientific evidence that demonstrates a critical role played by captive U.S. chimpanzees in biomedical research.

On December 15, 2011 the National Institutes of Health (NIH) suspended all new grants for biomedical and behavioral research on chimpanzees and accepted the first uniform criteria for assessing the necessity of such research. The recommendations concluded that most biomedical research on chimpanzees is unnecessary.¹

The report, commissioned by the NIH, was produced by a committee of medical and scientific experts convened by the National Academies' Institute of Medicine (IOM). The committee used the following principles to develop criteria to evaluate research with chimpanzees:

1. The knowledge gained must be necessary to advance the public's health;
2. There must be no other research model by which the knowledge could be obtained, and the research cannot be ethically performed on human subjects; and
3. The animals used in the proposed research must be maintained either in ethologically appropriate physical and social environments or in natural habitats.

In particular, the committee found that research on immunology involving monoclonal antibodies was not necessary due to advancements in new technology.² Contrary to ACLAM's claims that chimpanzees are necessary for the development of the hepatitis C virus vaccine in particular, the committee was actually unable to reach consensus on this issue.³

Within an hour of the report's release, NIH Director Dr. Francis Collins accepted the recommendations in the report and suspended all new research with chimpanzees until its suggestions could be implemented.⁴ Current research that does not conform to the new rules will be phased out. At present NIH funds 37 projects with chimpanzees, and Collins believes that about half of the research will fail to meet the new criteria.

The conclusions reached by the committee are contrary to allegations made by ACLAM and APV that chimpanzees play a "critical role in biomedical research" and their use carries a direct benefit to chimpanzees and other non-human primates.

¹ See Report at 66-67.

² See Report at 36-42 & 67; See also Science, U.S. Will Not Finance New Research on Chimps, available at http://www.nytimes.com/2011/12/16/science/chimps-in-medical-research.html?_r=3&hp (Dec 15, 2011).

³ See Report at 47-55 & 67 ("it is important to note that there was a consensus among the committee that human trials of candidate vaccines could be designed and performed ethically with or without data from chimpanzee research."); See also release at <http://www.nih.gov/news/health/dec2011/od-15.htm>. Please note that the report also states that "the present trajectory indicates a decreasing scientific need for chimpanzee studies due to the emergence of non-chimpanzee models and technologies." The committee recognized that some comparative genomics research might still be necessary, but this involves collecting samples from living animals.

⁴ See release at <http://www.nih.gov/news/health/dec2011/od-15.htm>.

II. Claim: Significant attention is given to enhance the mental and physical health of chimpanzees used in biomedical research.

The Association for the Assessment and Accreditation of Laboratory Animal Care International (AAALAC) is a private nonprofit organization that provides a voluntary accreditation and assessment program for companies, universities, hospitals, government agencies and other research institutions for the use of animals in science. Its mission is to “enhance the quality of research, teaching, and testing by promoting humane, responsible animal care and use,” providing “advice and independent assessments to participating institutions,” and accrediting “those that meet or exceed applicable standards.” All U.S. primate research centers are already accredited by AAALAC, and Dr. Jeffrey Kahn, chairman of the Institute of Medicine committee, has stated that this accreditation meets the IOM committee’s recommendation.⁵

Although accredited by AAALAC, the University of Louisiana New Iberia Research Center has been cited numerous times for failure to consider less distressful procedures that include darting chimpanzees repeatedly, failure to provide adequate pre- and post-procedural care for chimpanzees, and poor housing facilities.⁶ Claims made by ACLAM and APV that chimpanzees are “not housed singly” and housing is “spacious” are simply unfounded. Chimpanzees are often moved to small isolated cages during the active period of their protocols which can be days, weeks, or even longer.⁷ This facility and others certainly call into question the care provided for the mental and physical health of chimpanzees used in biomedical research.⁸

In addition, the documented use of darts on chimpanzees, as well as the significant amount of research presented in the petition regarding the use of severe procedures to control chimpanzees and force their participation in experiments directly contravenes claims made by ACLAM and APV that chimpanzees are now voluntarily cooperating (through positive reinforcement) with experimental procedures. While AWI supports and encourages voluntary cooperation by nonhuman primates in research, the petition makes clear that many chimpanzees are frequently anesthetized using a dart gun and have endured repeated assault by laboratory technicians

⁵ See Report at 27.

⁶ See APHIS report at

http://www.aphis.usda.gov/foia/enforcement_actions/2010/May/Animal%20Welfare%20Act/Stipulations/LA09013-AC%20Univ%20of%20LA%20Stip.pdf.

⁷ See petition at 89 - Chimpanzees used in these research protocols are usually isolated in individual cages measuring only 5 ft x 5 ft x 7 ft with no opportunity for social or outdoor activity; 9 C.F.R. §§ 3.80, 3.81..

⁸ There have been other facilities accredited under the AAALAC system that have been cited by the U.S.

Department of Agriculture for serious violations concerning the mental and physical health of primates used in biomedical research. These examples demonstrate that AAALAC accredited facilities can and do violate animal welfare regulations. For example, between 2007 – 2008, the Lovelace Respiratory Research Institute was cited as violating 9 C.F.R. § 3.75 for failure to design and construct nonhuman primate facilities so that they were sound and protected nonhuman primates from injury. In addition, the University of Kansas Medical Center was cited for many violations in 2009, and in particular, for providing such severely poor physical and mental treatment of primates that 26 of them were found to be suffering from alarming hair loss and swaying.

administering anesthesia with a dart gun (called a “knock down”) in order to secure their participation in experiments.⁹

III. Claim: Ending the split-listing of chimpanzees for biomedical research would block the use of all chimpanzees without the opportunity to provide justification.

This claim is simply untrue. The Service may issue permits to “take” an endangered species for: (1) scientific purposes, (2) enhancing its propagation or survival, or (3) incidental taking, when done under the provisions of a Service-approved habitat conservation plan.¹⁰ Claims made by ACLAM that uplisting all chimpanzees as endangered could possibly “cost lives” which includes “patients facing life-threatening diseases” is simply false given provisions in the ESA that allow for the use of endangered and threatened species for scientific purposes and for incidental take. If anything, under the terms of the ESA, an endangered listing for captive chimpanzees, including those used for biomedical research, will actually benefit conservation of chimpanzees in the wild by requiring institutions that propose to use chimpanzees in experiments to develop programs and/or invest funds in existing programs that conserve and protect chimpanzees and their habitat in the wild.

AWI also notes that although it has also been claimed that the inhumane treatment of chimpanzees in captivity and their lack of physical and mental health is irrelevant to their listing under the ESA, this is also incorrect. Harassment and harm that is done to chimpanzees in biomedical research violates the plain meaning of the “takings” clause within the ESA and is an indication that the split-listing has worked against conservation of the species.¹¹

Conclusion:

AWI again respectfully requests that the FWS proceed with the publication of a proposed rule to list all chimpanzees, wild and captive, as endangered. The expectations of the initial split-listing by the FWS have not been realized given the continued illegal trafficking of live chimpanzees in the pet and entertainment trades¹² and the overall increase in threats to the population in the wild.¹³ These concerns are directly relevant to the listing provisions and plain meaning of the ESA, which does not

⁹ See Petition at 89-90.

¹⁰ Take that occurs during other types of activities--i.e., take for scientific purposes, to enhance the propagation or survival of a listed species, or for purposes of establishment and maintenance of experimental populations—must be authorized by a permit under section 10(a)(1)(A) of the ESA (e.g., "Safe Harbor" or "recovery" permits). In some cases, however, take in the form of capture or harassment can be authorized under an incidental take permit, if the purpose of such actions is to minimize more serious forms of take (e.g., death or injury) or to conduct monitoring programs during activities authorized by the permit.

¹¹ The FWS has a duty to show that the split-listing serves to promote the conservation of *Pan troglodytes*, consistent with the overall purpose of the ESA. See § 1531(b) (2006). As the petition demonstrated, the use of captive chimpanzees for commercial purposes is providing the message that chimps are abundant, contributing to overall demand and working against conservation efforts to save a ‘rare’ species.

¹² See Petition at 111-117.

¹³ See Petition at 94.

speak to the necessity and convenience of using chimpanzees in laboratories, but rather to the importance of conserving endangered and threatened species in the wild.

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

Sincerely,

A handwritten signature in cursive script that reads "Tara Zuardo".

Tara Zuardo
Wildlife Program Associate

Resources [Attached]:

Institute of Medicine, *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity*. Released December 25, 2011.