

Tiger King: How is that Legal??

By Kelsey Gilmore-Futeral, Esq.

As the South Carolina State Director for the Humane Society of the United States, I frequently answer animal law questions. A common question since America discovered Joe Exotic in the Netflix series *Tiger King* is: “How is any of that legal?!”

While *Tiger King* missed its opportunity to explore the intrinsic cruelty of providing big cat cubs for the public to pet, play and pose for photos with, it did lay bare some of the industry’s criminal elements. This article will address “how any of that is legal” and how facilities in South Carolina play a direct role in supporting a cruel and dark industry that uses, abuses and discards the most vulnerable members of an endangered and beloved species.

The Pathway to an Exotic Animal Law in S.C.

Picture this: Law enforcement rolling through neighborhoods, armed with weapons, patrolling the suburban landscape. Infrared technology deployed to find threats slinking through the grass at night. Dangerous combat as a police officer uses a handgun to kill a 300-pound tiger before the tiger kills him. While it sounds fictional, this is exactly what happened in Zanesville, Ohio in 2011 when Terry Thompson released dozens of exotic animals from his private menagerie and then killed himself. Law enforcement’s ensuing actions resulted in 18 tigers, 17 lions and 14 more exotic animals being shot to death to protect the surrounding community.¹ Ohio did not regulate exotic animal ownership at the time, and the massacre resulted in a new Ohio law restricting the ownership of dangerous wild animals that same year.²

Since 2002, South Carolina lawmakers have filed bills to regulate exotic animals four times: 2002,³ 2006,⁴ 2012⁵ and 2017.⁶ The only bill to pass is H.3531, which the governor signed in 2017. Versions of these bills proposed regulating a variety of animals, including coyotes, armadillos, opossums, rhinos, venomous reptiles, alligators, tigers, bears, squirrels, pythons and deer. The bills also proposed regulating various actions, including possession, breeding, selling, microchipping,⁷ mandating liability insurance,⁸ transporting, developing recapture plans, and complying with caging requirements. Notably, the formal summaries for the bills introduced in 2002, 2006, and 2012 expressed an intent to “prohibit public contact with an exotic animal.” Yet none of them included language that would have done so.

Current S.C. Exotics Law

The 2017 law addresses private possession of a small number of species: great apes, lions, tigers, leopards, jaguars, cougars, cheetahs, snow leopards, clouded leopards and bears not native to South Carolina.⁹ The law generally prohibits covered entities from importing, breeding, selling and possessing these species after Jan. 1, 2018. However, a person in legal possession of a regulated species before Jan. 1, 2018, and who didn’t have a USDA license before that date may continue to possess the animal subject to certain registration requirements and federal Animal Welfare Act (AWA) compliance.¹⁰ The glaring loophole in this law is that it exempts from regulation anyone who possesses a U. S. Department of Agriculture Class A, B, or C license and is in compliance with the AWA.¹¹ This means many facilities continue to legally hold, display, breed and encourage the public to interact with wild and dangerous animals with no oversight from state or local authorities and minimal and inconsequential supervision from the federal government.

USDA Oversight is Meaningless

South Carolina law allows USDA-licensed facilities to skirt the state law that would more strictly regulate ownership of exotic animals like tigers. That gap is detrimental to the welfare of animals and to the safety of South Carolinians. A USDA license might make people feel more comfortable about the treatment of the animals at a cub petting zoo. However, while the USDA issues rules that appear to protect animals, such as a 2006 statement that declawing or defanging wild or exotic carnivores “is no longer considered to be appropriate veterinary care,”¹² the regulations under the AWA are weak, outdated and poorly enforced. Even when inspectors cite violations, the USDA rarely revokes a license, and, on the rare occasion it does, it typically does not confiscate the animals or force the licensee to transfer them to a more suitable facility.

The USDA Fails to Enforce Its Regulations

The USDA has refused to revoke licenses of exhibitors in South Carolina despite complaints regarding the animals’ conditions. However, in Indiana in April 2020, a USDA judicial officer upheld the agency’s revocation of Tim Stark’s license to exhibit animals.¹³ Stark held a Class B Dealer license from 1999 until 2008 and a Class C Exhibitor license from 2008 to present¹⁴ despite his conviction for violating the Endangered Species Act in 2008.¹⁵ The ruling relied on inspection reports from 2012 through 2016.¹⁶ In an inspection report dated March 2017, the USDA found the following violations (not an exhaustive list):

- animals with red and bleeding appendages;
- at least 20 wild cats who had been declawed (including weeks-old lion and tiger cubs, one of whom had a 50% chance of survival due to the severity of the infection from declawing);
- a hyena living in a 4ft x 4ft x 3ft wire cage that did not allow the animal to stand fully upright;
- wolves, bears and foxes with inadequate shelter;
- inadequate space resulting in an entire colony of fruit bats dying;
- primates living in cages with nothing but a water bottle;
- insufficient birth records not accounting for at least two tiger cubs; and
- expired medication.¹⁷

Furthermore, in 2018, a veterinarian employed by this same USDA-licensed facility admitted he had been declawing endangered or threatened exotic cats without anesthesia or pain medication since 2015.¹⁸ The only consequence administered by the USDA for these violations was a deadline for Stark to correct the violations.

Finally, in 2020, the USDA delivered a meaningful remedy of \$340,000 in fines and revoked Stark’s USDA license to exhibit wild and exotic animals.¹⁹ However, the USDA did not ask, nor did the judicial officer order, that any of the animals be surrendered to authorities or removed from Stark’s facility. The judicial officer did not order jail time for maltreatment of endangered animals that would constitute felony animal cruelty of a pet under South Carolina law.

This year, USDA violations for inhumane care and treatment of animals with zero consequence hit closer to home. On March 5, 2020, Waccatee Zoo in Myrtle Beach was cited for the following AWA violations: 1) failure to provide veterinary care to animals with significantly overgrown hooves; 2) failure to provide adequate shelter for animals, resulting in living environments that were “excessively soiled and muddy;” and 3) failure to provide dry space from inclement weather.²⁰ The USDA gave the zoo 71 days to correct these deficiencies. To put this period into context, according to Clemson University Cooperative

Extension Service, horses should have their hooves trimmed every six to 12 weeks.²¹ The USDA cited Waccatee for animals with hooves that were already overgrown, yet gave the exhibitor an *additional* 10 weeks to trim the animals' hooves to an acceptable length, rather than requiring the zoo give immediate attention to the animals' condition.

The USDA's enforcement of the AWA has waned in recent years. Between 2016 and 2018, the number of written warnings issued by the USDA plummeted nearly 90%.²² In that same period, the number of citations issued dropped 65%.²³ As of June 2020, more than 7,000 entities were licensed/registered with the USDA,²⁴ and in 2018, the USDA's animal care division employed "more than 100 inspectors."²⁵ This overwhelming caseload of nearly 70 facilities per inspector means inspections can be rushed, and violations remain uncorrected with no relief for the animals. In an OIG audit from 2014, an exhibitor in North Carolina received an official warning for failing to remove a safety hazard in a bear enclosure.²⁶ The safety hazard remained for the next two annual inspections.²⁷ A safety violation existed in this enclosure for more than three years, and the USDA did nothing to mitigate the hazard.

The inspection reports and audits of the inspections on USDA-licensed exhibitors demonstrate that USDA oversight is inadequate; the USDA does not aggressively take action to protect animals abused and neglected in licensed facilities, nor does it expeditiously address violations that pose a direct threat to the public's health and safety.

Cub petting is inherently cruel

Animal exhibitors that offer cub petting and other public interactions with infant animals are involved in the most unethical form of exploitation. Outfits that exploit cubs regularly remove infants prematurely from their mothers. Despite the USDA notice that "newborn and infant non-domestic cats four weeks (28 days) of age or younger should be housed in the controlled environment of a heated, clean and sheltered enclosure ... or in a clean, sheltered enclosure with the mother and any healthy siblings,"²⁸ viewers of *Tiger King* saw infant tigers pulled away from their mother with a stick just moments after being born.²⁹ In undercover video footage obtained by the HSUS at facilities that conduct cub petting, handlers routinely punched baby tigers, pulled them on leashes, hit them with whips, pulled their tails, and hit or slapped their faces to control them as they naturally resisted being handled and held.^{30, 31} Cubs are kept hungry and offered milk bottles during public encounters so they will sit still and eat while posing for photos.³²

The USDA states that non-domestic cats four weeks of age or younger should not be exposed to the public due to health risks for the cubs.³³ The USDA further advises that the cubs are "too big, too fast and too strong to be used for public contact" after 12 weeks of age,³⁴ which means cubs are only profitable to cub petting facilities for approximately eight weeks.

With the number of infant tigers produced every year for tourists to pet and pose next to, one must ask the logical question: where do all the tigers go when they're too big to cuddle? Often these cubs are sold as pets, ending up in backyards and basements, or distributed to other substandard zoos or menageries. Cub petting leads to a never-ending cycle of big cats being born, used for public contact, then discarded, and is a major driver of America's huge population of captive big cats.

This is not only an animal welfare issue, but also a public safety issue. Even when captive-born and hand-raised, wild animals retain their natural instincts. They can and do injure and kill people. Careless handling and unsafe caging are the norm in this industry, and captive big cats take every opportunity to

escape. Attacks and escapes put communities and first responders at risk. Since 1990, more than 400 dangerous incidents involving captive tigers, lions, cougars and other big cat species have occurred in 46 states and the District of Columbia. Five children and 19 adults have been killed, and hundreds of others have lost limbs or suffered other injuries. The Big Cat Public Safety Act (H.R.1380/S. 2561) addresses these problems by prohibiting the possession of big cat species as pets and by prohibiting public contact with them.

But They're Endangered. How Can You Just BUY One?

While the AWA and the USDA regulate people and businesses exhibiting animals, the Endangered Species Act is also applicable as tigers of all subspecies are endangered.³⁵ Generally, the Endangered Species Act prohibits the following acts with an endangered animal, dead or alive:

- import or export;
- delivery, transportation or shipment in interstate or foreign commerce in the course of commercial activity;
- selling or offering for sale in interstate or foreign commerce; or
- taking (including harming, harassing and killing) within the US.³⁶

However, activities that would otherwise be prohibited in the list above may be allowed if a person or business acquires a captive-bred wildlife permit from the U.S. Fish and Wildlife Service.³⁷ A person may request a permit from the U.S. Fish & Wildlife Service to own, buy or sell a captive-bred endangered animal to any person who also has a permit for that type of animal.³⁸ Notably, under federal law, private owners can breed tigers within their state without a permit so long as the cubs are not bred for sale or commercial purposes or for non-commercial movement across state lines provided they meet the criteria of the Captive Wildlife Safety Act.³⁹ The Captive Wildlife Safety Act amended the Lacey Act to make it illegal to import, export, buy, sell, transport, receive or acquire certain species of big cats across state lines or U.S. borders but USDA AWA licensees are exempt. Incredibly, if an owner gives away or donates the cub for free, the owner need not possess a permit, and there is no oversight of his actions.⁴⁰

Tiger Hot Potato

In my professional capacity I receive calls about the mistreatment, suffering and abuse of animals all over the state. The most frustrating calls I receive concern exotic animals languishing in private, small or roadside zoos. Animal control officers say the USDA has exclusive jurisdiction but, according to S.C. Code 47-2-40, that may not be the case. USDA inspectors say no severe violations were observed when they last visited or, worse, violations have been cited, and a lengthy period for correction has been provided. Ultimately, despite having at least two agencies responsible for her well-being, a once majestic tiger becomes a skinny, neurotic, pacing hot potato tossed back-and-forth between enforcement agencies, both tasked with protecting animals and neither following through with their responsibilities.

As of June 1, 2020, South Carolina has 36 USDA-licensed exhibitors.⁴¹ One of these facilities has a thriving tiger cub petting business, despite undercover video footage of the owner saying he "normally" kills tiger cubs with cosmetic defects like crossed eyes (caused by the facility's inbreeding to produce white tigers).⁴² Given the knowledge that these endangered and majestic animals can catch COVID-19 from humans⁴³ and the fact that cubs are pulled from their mothers as infants for stressful and rough handling with no disclosure about where hundreds of adolescent tigers end up each year, we are left to

wonder why South Carolina continues to rely on the USDA to determine which facilities are safe and ethical keepers of exotic, dangerous and endangered animals.

So, the answer to the question “*Tiger King*, how is that legal?” is “because the laws allow it.” State and federal lawmakers must act decisively to tighten and clarify the regulations on the ownership, display and public interaction with wild animals to remove the exemption enjoyed by USDA-licensed facilities, and to ban all public interaction with exotic animals, including cub petting, for the safety of South Carolina communities and for the welfare of these majestic animals.

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¹ Christina Caron, Zanesville Animal Massacre Included 18 Rare Bengal Tigers, (Oct. 19, 2011), <https://abcnews.go.com/US/zanesville-animal-massacre-included-18-rare-bengal-tigers/story?id=14767017>

² OH R.C. § 935.01 et seq.

³ 2001 Bill Text SC H.B. 4403.

⁴ 2005 Bill Text SC S.B. 959.

⁵ 2011 Bill Text SC S.B. 1204.

⁶ 2017 Bill Text SC H.B. 3531.

⁷ 2011 Bill Text SC S.B. 1204.

⁸ Id., 2005 Bill Text SC S.B. 959.

⁹ S.C. Code Ann § 47-2-10(2).

¹⁰ S.C. Code Ann. § 47-2-30(B).

¹¹ S.C. Code Ann. § 47-2-20(6)-(7) (while paragraph 7 requires post-2018 USDA license holders to “comply with the applicable provisions of this chapter,” it remains unclear which provisions those are).

¹² USDA Animal Care, Information Sheet on Declawing and Tooth Removal (Aug. 2006)

https://www.aphis.usda.gov/animal_welfare/downloads/big_cat/declaw_tooth.pdf

¹³ *USDA v. Timothy Stark and Wildlife in Need And Wildlife in Deed, Inc.*, AWA Docket No. 16-0124, 16-0125 (April 8, 2020) <https://drive.google.com/viewerng/viewer?url=https://interactive.whas11.com/pdf/Wildlife-in-Needs-Appeal.pdf>.

¹⁴ Id. at 11.

¹⁵ Id. at 13 citing *United States v. Timothy L. Stark*, Case No. 4:07-CR-00013-001 (S.D. Ind.).

¹⁶ Id.

¹⁷ USDA Inspection Report, Certificate 32-C-0204, Inspection ID 2016082568174018 (March 17, 2017).

https://www.mediapeta.com/peta/PDF/2017-03-17_USDA_IR_Tim_Stark_NCI.pdf

¹⁸ Amanda Carrozza, Veterinarian Admits to Declawing Lions, Tigers in Lawsuit Settlement, Veterinarians Money Digest, (Oct. 24, 2018) <https://www.vmdtoday.com/news/veterinarian-admits-to-declawing-lions-tigers-in-lawsuit-settlement>

¹⁹ *USDA v. Stark*, AWA Docket No. 16-0124, 16-0125 (April 8, 2020)

²⁰ USDA Inspection Report, Certificate 56-C-0230, Inspection ID 2016082569761553 (March 6, 2020). <https://acis.aphis.edc.usda.gov/ords/f?p=118:21:::NO::RXQIZAVXA:2016082569761553&cs=16FE6925971F27BDF4F505A4D8C6F9613>.

²¹ Jason L. Turner, *Evaluation of Equine Foot Care*, (June 2017)

<https://www.clemson.edu/extension/scaged/scffa/career-development-events/files/horse-evaluation/evaluation-of-equine-hoof-care.pdf>.

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- ²² Karin Brulliard, USDA's enforcement of animal welfare laws plummeted in 2018, agency figures show, Wash. Post. (Oct. 18, 2018) www.washingtonpost.com/science/2018/10/18/usdas-enforcement-animal-welfare-laws-plummeted-agency-figures-show/.
- ²³ Karin Brulliard et al., Caged raccoons drooled in 100-degree heat. But federal enforcement has faded, Wash. Post (Aug. 22, 2019) www.washingtonpost.com/science/caged-raccoons-drooled-in-100-degree-heat-but-federal-enforcement-has-faded/2019/08/21/9abf80ec-8793-11e9-a491-25df61c78dc4_story.html.
- ²⁴ USDA List of Active Licensees and Registrants (June 1, 2020) https://www.aphis.usda.gov/animal_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf.
- ²⁵ Brulliard, USDA's enforcement of animal welfare laws plummeted in 2018, agency figures show, www.washingtonpost.com/science/2018/10/18/usdas-enforcement-animal-welfare-laws-plummeted-agency-figures-show/.
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ USDA Animal Welfare Inspection Guide (March 2020). https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf, pages 3-7.
- ²⁹ Tiger King: Murder, Mayhem and Madness Episode 4 (Netflix 2020)
- ³⁰ The Humane Society of the United States, Tiger King - Joe Exotic: Undercover Investigation Footage (March 27, 2020) https://www.youtube.com/watch?v=qES_d8dHPzk.
- ³¹ The Humane Society of the United States, Tiger Cub Trade Undercover Investigation Footage (Jan. 22, 2015) What Baby Tigers are Forced to do Might Shock You! <https://youtu.be/klV79glZMeE>.
- ³² The HSUS Investigates: Natural Bridge Zoo in Natural Bridge, Virginia (2014) <https://www.humanesociety.org/sites/default/files/docs/hsus-investigates-roadside-zoo-natural-bridge.pdf>.
- ³³ USDA Animal Welfare Inspection Guide (March 2020) https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf, at 3-8.
- ³⁴ *Id.* at 3-8.
- ³⁵ 35 Fed. Reg. 8491, 8495 (June 2, 1970) (Initial listing of four tiger species); 37 Fed. Reg. 6476 (March 28, 1972) (listing of all tigers regardless of subspecies); 50 C.F.R. § 17.11(h).
- ³⁶ 16 U.S.C. § 1538(a).
- ³⁷ 16 U.S.C. § 1539(a)(1) (permits may be issued allowing otherwise prohibited acts for scientific purposes or to enhance the survival of the species); 50 C.F.R. § 17.21(g) (captive-bred wildlife permit regulation).
- ³⁸ *Id.*
- ³⁹ US Fish and Wildlife Service, US Captive-bred Inter-subspecific Crossed or Generic Tigers, Questions and Answers (May 6, 2016) <https://www.fws.gov/home/feature/2016/pdfs/Generic-Tiger-Final-Rule-FAQs.pdf>.
- ⁴⁰ *Id.*
- ⁴¹ US Fish and Wildlife Service, Animal and Plant Inspection Services, List of Certificate Holders (June 1, 2020) https://www.aphis.usda.gov/animal_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf
- ⁴² Videotape: Undercover Video (The Humane Society of the United States, 2011) <https://newsroom.humanesociety.org/fetcher/index.php?searchMerlin=1&searchBrightcove=1&submitted=1&w=d&q=TigerKing0420>.
- ⁴³ USDA, Statement on the Confirmation of COVID-19 in a Tiger in New York (May 13, 2020) https://www.aphis.usda.gov/aphis/newsroom/news/sa_by_date/sa-2020/ny-zoo-covid-19. USDA, Confirmed cases of SARS-CoV-2 in Animals in the United States (July 16, 2020) https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/sa_one_health/sars-cov-2-animals-us.