Legislation Breakdown: H.R. 1380

The Big Cat Public Safety Act

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Executive Summary

H.R. 1380, also known as the Big Cat Public Safety Act, is a proposed bill that would amend the requirements put in place by the Captive Wildlife Safety Act with the goal of enhancing protections for captive big cats within the United States. Messages promoting the bill characterize it as having two specific goals: ending the practice of private individuals keeping big cats as pets, and ending the use of big cats in "pay to play" schemes such as photo ops and cub petting sessions. However, the impact of H.R. 1380 will have far broader repercussions for all big cats in the United States than these characterizations would suggest.

This breakdown provides an analysis of H.R. 1380 by taking an objective approach to examining the text. Rather than address the sentiments motivating this piece of legislation, this paper assesses the bill for functional characteristics: will it achieve what legislators intend? Does it do so effectively, efficiently, and in a way that protects animal welfare? Does it fulfill the desires indicated by public support? This analysis relies on a close examination of the relevant laws and rule-making processes, alongside regulatory precedent, to develop an understanding of how the bill's requirements are likely to be implemented.

The results of this assessment are cause for major concern when held up to those criteria: H.R. 1380 is riddled with ambiguous language, implements illogical and incompatible restrictions on exempted entities, and places the responsibility of enforcement on an agency that does not have experience regulating the business operations of the entities it would now oversee. As written, the bill does not even consistently ban the practices it is characterized as opposing, and instead imposes a range of badly-defined strictures that have the potential to seriously hinder or prevent the operation of reputable zoos and wildlife sanctuaries. Given the vast range of possible interpretations of the text by USFWS, the bill's impacts could, at best, require many exhibitors to conduct major renovations to existing big cat exhibits; at worst, it could completely undermine current staffing practices and cause irrevocable damage to the long-term sustainability of conservation breeding programs.

While enacting legislation to ensure the welfare of captive big cats is a laudable goal, the wording of H.R. 1380 cannot be guaranteed to do so successfully. Instead, it creates sweeping restrictions with the goal of impacting the areas where welfare issues are likely to occur in passing, and, as a result, risks the viability of the big cat management community as a whole. The bill is so broadly written that it is currently impossible to gauge whether it will truly protect the big cats it aims to help and avoid harmful impacts on those housed in responsible, credible facilities.

Laws that will impact the welfare of living animals and the viability of conservation breeding programs for critically endangered species must be crafted carefully, thoughtfully, and precisely in order to ensure they achieve their goals without extraneous negative impacts. H.R. 1380 as written neither meets that duty of care nor fulfills the commitments its proponents have made to the public. The range of possible interpretations of the language in H.R. 1380 is so broad and potentially so harmful that it is necessary to insist that the language be clarified before being passed into law.

Introduction

H.R. 1380, also known as the Big Cat Safety Act, is a proposed bill that would amend the requirements put in place by the Captive Wildlife Safety Act with the goal of enhancing protections for captive big cats within the United States [1]. Messages promoting the bill characterize it as having the specific goal of ending two practices: private individuals keeping big cats as pets, and the use of big cats in “pay to play” schemes such as photo ops and cub petting sessions. However, H.R. 1380 will have far broader repercussions on all big cats in human care than the general public realizes.

To continue housing big cats, the zoos, sanctuaries, colleges, and other businesses would be required to seek exemptions from the bill's prohibition on owning those species. The exemptions allowed within the bill involve a series of vaguely-worded requirements, including many that seem likely to interfere with basic business functions and daily animal care. As a result, the exact extent of its impact on all professional entities holding big cats is unknown, because many of key terms in the bill are undefined or ambiguous, and the criteria businesses must meet to be exempt are vague and internally inconsistent. It is impossible for legislators to know what, if any, damage H.R. 1380 would do to the reputable zoos and sanctuaries they represent if it passed as currently written.

Other analyses have similarly found that the extent of this bill’s impact is impossible to determine. When attempting to conduct a cost estimate for this bill, the Congressional Budget Office (CBO) wrote in their cost assessment of the bill that, for example, there was no information available about “the ability of currently licensed exhibitors to meet the new set-back and barrier requirements, or the number of exhibitors that would need to develop a conservation plan”[2] and that CBO was therefore unable to estimate the cost of those requirements.

Constituents, industry groups, and legislators have a standard expectation that they be able to judge approximately the impacts of a bill before they decide whether to support it. The stated goals of H.R. 1380 are well-intentioned, but the language allows for so many vastly divergent reasonable interpretations, that the impacts could be anything from minimal to catastrophic for facilities that currently keep big cats at industry-standard levels of care. Because of the lack of relevant definitions to draw upon, it is currently difficult or, in some areas, impossible to make confident guesses about H.R. 1380's impact on even the high-quality facilities that are vital to educational and conservation programs.

This paper analyses the ambiguous impacts of the bill by taking a multi-step approach to examining the text. The first section describes the basic structure of the changes this bill would make if passed in its current form, to introduce the language at hand. The second section describes the unusually vast range of possible interpretations of that language, and the drastic impacts that some straightforward interpretations would have on major sanctuaries and zoos. However, not all of the negative impacts of the bill could be solved by disambiguation. The third section investigates the potential issues caused by promulgating

regulations that reflect the bill's inconsistent safety requirements and requirements for facility redesign. Fourth, this paper analyzes the far-reaching and unpredictable problems with the way the prohibitions interact to impact regulatory agencies, conservation breeding programs, and the entire big cat management industry as a whole.

Structure of the Changes Made by H.R. 1380

General Prohibitions

H.R. 1380 would add prohibitions against the breeding or possession of big cats by amending the Lacey Act, which already includes prohibitions against their interstate transport and sale.[1] Specifically, it would add the following paragraph, which mostly reiterates existing language but also adds new prohibitions that are shown here in bold:

> *"It is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce,* ***or in a manner substantially affecting interstate or foreign commerce, or to breed or possess,*** *any prohibited wildlife species."*

The ”prohibited wildlife species” are already defined by the law as “any lion, tiger, leopard, cheetah, jaguar, or cougar species, or any hybrid of such species.” This means that the new prohibitions of H.R. 1380 would impact anyone who owns a lion, tiger, leopard, snow leopard, clouded leopard, cheetah, jaguar, cougar, liger, liliger, tigon, and any other big cat hybrid. For the purposes of this paper, this list of animals will be collectively referred to as “big cats” from here on.

New Definitions

H.R. 1380 would add the following definition for “breed” to the text of the Lacey Act:

> *“The term* ***‘breed’*** *means to facilitate propagation or reproduction (whether intentionally or negligently), or fail to prevent propagation or reproduction.”*

Penalties

Anyone who knowingly violates H.R. 1380’s prohibitions against breeding or possessing big cats will “be fined not more than $20,000, or imprisoned for not more than five years, or both.” In addition, each violation is to be considered a separate offense (e.g., if five animals are involved in a single incident, it counts as five individual violations). If the violation involves the transport of a big cat through multiple locations, it is considered an individual offense where the cat started out, as well a separate offense “in any district in which the defendant may have taken or been in possession of the [big cats].”

Exemptions

H.R. 1380 defines four groups of entities that can be exempt from the prohibitions against ownership and breeding, if they fulfill a series of criteria: some facilities licensed by the United States Department of Agriculture (USDA); non-profit sanctuaries; state-run higher education, agencies, and veterinarians; and animal transport businesses. In addition, private citizens currently in possession of big cats will be allowed to keep those animals if they register their animals with the United States Fish and Wildlife Service (USFWS), do not breed or acquire more cats, and do not allow members of the public to have any contact with the animals.

USDA-Licensed Facilities

Businesses licensed by USDA as animal exhibitors (Class C) or registered as federally-run animal facilities (Class F) (collectively referred to from here on as USDA-licensed facilities for brevity) can be exempt from H.R. 1380's prohibitions if they follow specific regulations regarding big cat management, safety, and use. To be exempt, a USDA-licensed facility must:

- Hold its USDA Class C license or Class F registration "in good standing"
- Not allow any individual to come into direct physical contact with any big cat, unless one of these conditions is true:
    - The individual is "a trained professional employee or contractor of the entity or facility (or an accompanying employee receiving professional training)"
    - The individual is "a licensed veterinarian (or a veterinary study accompanying such a veterinarian)"
    - The individual is "directly supporting conservation programs of the entity or facility, the contact is not in the course of commercial activity (which may be evidenced by advertisement or promotion of such activity or other relevant evidence), and the contact is incidental to humane husbandry conducted pursuant to a species-specific, publicly available, peer-edited population management plan that has been provided to the Secretary[1] with justifications that the plan—

        (aa) reflects established conservation science principles;

        (bb) incorporates genetic and demographic analysis of multi-institution population of animals covered by the plan; and

[1] It is unclear within the bill text if this would be the Secretary of Agriculture or the Secretary of the Interior. The CBO cost estimate assumes that it would be the responsibility of the USDA, but it may be determined differently during promulgation.

(cc) promotes animal welfare by ensuring that the frequency of breeding is appropriate for the species"

- Ensure that during public exhibition of lions, tigers, leopards, snow leopards, jaguars, cougars, and any hybrid of those species, the animal is "at least 15 feet from members of the public unless there is a permanent barrier sufficient to prevent public contact."

Non-Profit Sanctuaries

- Must be "a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and described in sections 501(c)3 and 170(b)(1)(A)(vi) of such Code"
- Does not "commercially trade" in any big cat species "including offspring, parts, and byproducts of such animals"
- Does not breed any species of big cat
- Does not allow any "direct contact between the public and any [big cat] species"
- Does not allow the "transportation and display of any [big cat] species off-site"

State Entities

- State-licensed veterinarians, state agencies, state colleges, and state universities are all exempt.

Animal Transport Businesses

- An entity that "has custody of any [big cat] solely for the purpose of expeditiously transporting the [big cat] to [a person or business who is exempt as described above] with respect to the species"

In addition, it allows for any big cat owner who does not qualify for one of those four exemption categories to keep their big cats for the duration of the animals' lives through a "sunset clause", as long as they:

- Owned them before the date H.R. 1380 was enacted
- Registered each animal with US Fish and Wildlife (USFWS) no later than 180 days after the date H.R. 1380 was enacted
- Does not "breed, acquire, or sell" any big cats after the date the law was enacted
- Does not allow the public to have contact with their big cats

Problems Arising from the Definitions of Terms in H.R. 1380

Many of the terms that are central to H.R. 1380 - and are therefore central to the actualization of its goals - are not defined within the bill and do not appear to have a sufficient definition within the Lacey Act or any other related legislation. This would not be a problem if, like many other terms used in legislation, these terms had "common sense" definitions that would clearly guide regulatory agencies' actions while promulgating the associated regulations. The language used in regulating animal welfare and use, however, is often more complicated and contingent upon specificity than it appears to the general public. Undefined or ambiguous terms in animal-related legislation often result in a regulatory interpretation that differs from the intention behind the bill. This poses a problem when the legislation being proposed will directly impact the management and welfare of live animals, since they have limited lifespans and their continued conservation is time-sensitive - the impact of a badly written or implemented law can have severe impacts on the animals it regulates in the time required to amend or repeal it. As such, specificity in the text of a bill is crucial to ensuring that regulatory agencies implement the law in accordance with what legislators intended. H.R. 1380 contains ten terms with missing or ambiguous definitions and which also do not have definitions in other laws or regulations pertaining to animal management. Even a small change in the interpretation of each of these terms could drastically change the scope and impact of H.R. 1380's prohibitions.

When operative definitions are not available either in the text of a law or in related laws or regulations, regulatory agencies must create their own interpretation of the term to implement the law. This is normally informed by the regulatory agency's expertise in the areas they oversee. However, H.R. 1380 amends the Lacey Act, which is overseen by the USFWS, and the particular type of regulatory action required to enforce the bill has previously been handled by a different agency. While USFWS oversees interstate business transactions involving big cats [3], handles the captive bred wildlife permitting system [4], and investigates wildlife trafficking and Endangered Species Act violations [5], USFWS has no involvement in the operation of animal-related businesses, an area overseen by USDA. Without a detailed understanding of the daily operations of the types of entities exempted from H.R. 1380's prohibitions, it is possible that interpretations chosen by USFWS will have a different rationale and impact behind them than would arise from a USDA implementation process.

In addition, USFWS has previously chosen to interpret language regarding big cat regulation in ways that are directly contradictory to the interpretation preferred by the zoological industry [6], which lends credence to the idea that their regulatory interpretations of the terms in this bill are likely to differ from the "common sense" interpretation captive big cat management stakeholders are expecting. As currently written, it is entirely plausible that USFWS could decide to implement the bill in ways that would have unrealistic, inefficient, or injurious impacts on even credible big cat facilities.

Missing Definitions

This section will explore the importance and potential impacts of key undefined terms within the bill. These terms govern the situations in which educational, conservation breeding, and rescue facilities would be legally allowed to continue operating, so any change in their interpretation would result in severe consequences for these entities. *See: Impact of Credible Facilities Losing Exemption.* The section of the text relevant to each definition has been quoted here in italics, with the term itself highlighted in bold.

"[The] public"

> *"...ensures that during **public** exhibition of a lion (Panthera leo), tiger (Panthera tigris), leopard (Patnehra pardus), snow leopard (Uncia uncia), jaguar (Panthera onca) cougar (Puma concolor), or any hybrid thereof, the animal is at least 15 feet from **members of the public** unless there is a permanent barrier sufficient to prevent public contact;"*

While "the public" may seem like a straightforward concept in most contexts, the frequent use of non-professional skills and labor at institutions housing captive exotic animals means it's far more important to have a concrete definition for this bill than most others.

"The public" is commonly considered to encompass all non-employees of a business; in the captive animal management world, this leaves volunteers, interns, docents, contractors, and other invited professionals - such as external veterinarians and visiting members of the media - stuck in limbo. Volunteers are legally not employees [7], and while paid interns might be contractually considered employees due to monetary compensation and insurance coverage, the status of unpaid interns (a position which is very common within zoos and sanctuaries) is unclear. Many in the industry would consider them part of the purview of a facility and not members of the public, but US law is very clear that unpaid interns must not have an employee-type relationship with the business for which they are interning [8].

As many facilities holding big cats depend heavily on intern and volunteer labor, as well as donated efforts by contractors and other external professionals, the restrictions in this bill addressing proximity of "the public" to big cats have the potential to disallow many of the individuals critical to the daily functioning of exempted facilities from performing their tasks. *See: Results Do Not Match Public Expectations*

"Permanent barrier sufficient to prevent public contact"

> *"...ensures that during public exhibition of a lion (Panthera leo), tiger (Panthera tigris), leopard (Patnehra pardus), snow leopard (Uncia uncia), jaguar (Panthera onca) cougar (Puma concolor), or any hybrid thereof, the animal is at least 15 feet from members of the public unless there is a* ***permanent barrier sufficient to prevent public contact****;"*

There is no agreed-upon definition of what a "sufficient" barrier to prevent public contact consists of - this is a topic that has been treated very differently in different contexts. As such, it could be defined in any of a variety of ways when implemented, each of which would have different levels of impacts on facilities holding big cats.

It is unclear if designating fencing "sufficient to protect public contact" would mean that it must functionally prevent contact (and would only be invalid if the barrier were breached, as is generally how USDA interprets public barrier standards) or if it would have to prevent any/all chance of any member of the public from having any possible contact in any situation (requiring the entity to convert any fence within 15 feet of a public area, regardless of its functional efficacy, to an impermeable barrier such as concrete or plexiglass).

There does not appear to be an existing definition of this type of term within the regulations overseen by USFWS, since regulating the husbandry and construction practices by exhibitors or other licensees is not the general purview of the Department of the Interior. There is some existing generalized language within USDA regulations that might inform a regulatory definition of this phrase, but as USDA standards are qualitative standards, none of these regulations are prescriptive about what type of fencing is considered appropriate to fulfill the requirements, and none of it is specific to the group of species addressed by this bill.

- USDA regulations for nonhuman primates [9][10] and most exotic mammals[2] [11] require that enclosures must be constructed so that they are "structurally sound" and contain the species inhabiting them appropriately. The section relevant to nonhuman primates has additional conditions that other animals must be restricted from entering the enclosure, and that a barrier must exist between the primary enclosure and the public that "restricts physical contact" between the two; the section regarding the enclosures for other mammals does not have either of these requirements.

[2] Part 3 Subpart F of the USDA Animal Welfare Regulations covers all "warmblooded [sic] animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals."

- USDA regulations for the management of marine mammals also require their protection from "abuse and harassment" from the public through use of supervision or physical barriers [12], but does not define what type of physical contact is considered to fit that phrase or prescribe any specific type of barriers to prevent those actions.

- USDA regulations for the exterior perimeter of facilities that exhibit animals outdoors require a perimeter fence that keeps unauthorized persons from going through/over/under the fence and having any contact with the animals [13][14][15]. This section does address the height of a perimeter fence necessary for a facility that maintains certain dangerous animals [15] (including big cats) - it requires a fence height of at least 8 feet in these cases. These regulations, however, only apply to the perimeter fence of the entire property or animal facility, and do not apply to the primary or secondary fencing around enclosure fencing.

There is a section in a different part of the existing USDA regulation that requires the presence of barriers and/or sufficient distance between animals and the general viewing public so as to assure the safety and minimal risk of harm to both parties. While this section deals with the handling of animals, not enclosure regulations, this is the section of the standards that is generally listed as being violated when a critical non-compliance involving contact between an animal and the public occurs. As Animal Welfare Act standards are qualitative, the type of barrier and/or the sufficient distance required to fulfill this requirement is up to each USDA inspector's discretion; consequently, what is considered by USDA to be sufficient risk prevention for an enclosure may change if animal/public contact or injury does occur [16].

The USDA inspector's handbook contains various guidelines for what the Department of Agriculture considers generally required for the enclosures of some big cat species, in order for them to meet regulations and be considered secure containment for those animals. This list is slightly more prescriptive, containing suggested fence heights, climb-prevention methods, and guidance for furnishings and moats. However, these numbers are still explicitly considered guidance and leave final evaluation to the inspector. The USDA inspector's handbook, however, specifically says that the above guidance does not pertain to determining a licensee's compliance with the public barrier requirements as set forth by the animal handling section[3] It indicates that determining if a sufficient public barrier exists should be addressed as a separate issue from effective containment; however, how to determine or evaluate a big cat enclosure for compliance with that section does not appear to be covered in the text of the guidebook.

Currently, most primary enclosure fencing utilized by facilities holding big cats is some type of wire net, metal mesh, or metal bars where the public is held at a safe distance away from animals, sometimes utilizing solid plexiglass windows in specific areas to allow visitors a closer viewing experience. Service area fencing rarely utilizes barriers that are literally physically impermeable, as anyone working in those areas is trained on appropriate safety procedures for operating in proximity to dangerous animals, making current fencing more

[3] *"Note that this guidance is for enclosure design for compliance 9 CFR 3.125(a), and does not address handling requirements such as public barriers, which may need to be assessed as a separate issue."* [17]

than sufficient for safety. A broad application of the term "permanent barrier sufficient to prevent public contact" might determine that all or some of this fencing is insufficient, meaning that many facilities would not qualify for exemption without a major overhaul of those areas, and would therefore be in illegal possession of big cats.

If the bill passes as written without further definition of this term, it is impossible to determine whether any facility holding big cats within the United States, including facilities accredited by the Association of Zoos and Aquariums (AZA) or the Global Federation of Animal Sanctuaries (GFAS), would be in compliance when the regulations in it are implemented. The normal implementation of laws of this type includes a grace period in which facilities are given time to come into compliance, but even when given time to fix compliance issues, overhauls of this scope would be costly and extensive, so some facilities might not have the resources available to continue keeping big cats. *See: Major Combined Impact of "Public" and "Sufficient Barrier" Requirements; Impact of Credible Facilities Losing Exemption*

"Humane husbandry"

> *"[...] directly supporting conservation programs of the entity or facility, the contact is not in the course of commercial activity (which may be evidenced by advertisement or promotion of such activity or other relevant evidence), and the contact is incidental to* ***humane husbandry*** *conducted pursuant to a species-specific, publicly available, peer-edited population management plan that has been provided to the Secretary with justifications that the plan—"*

The Animal Welfare Act was established to provide "standards and certification" for "humane handling, care, treatment, and transportation of animals,"[18] but the specific phrase "humane husbandry" is not used within the regulations promulgated pursuant to that law [9], nor within the USDA Animal Welfare Inspection Guide (the inspector's handbook) [19].

"Humane husbandry" appears to be referenced in multiple places, including proposed amendments to the Animal Welfare Act [20] and some state laws, which indicates that a definition may exist somewhere internal to the USDA.

No results were returned when the term "humane husbandry" was searched on the USDA's Animal and Plant Health Inspection Service (APHIS) website [21]. The only result that appears when the term is searched on the USDA National Agricultural Library website [22] is a link on the "Standards and Guidelines" section of the Animal Welfare Information Center [23], which is listed as the Animal Welfare Institute's (AWI) "Animal Welfare Approved Standards." However, that link leads to a webpage detailing the history of that 501(c)3's involvement in shaping "Farm Animal Standards," [24] which does not contain the term. Further

searches of the AWI website find that the welfare standards put forth by the organization are branded with the term "humane husbandry," but reveal no concrete definition for the term [25]. The same search on the website for the USFWS returns no results [26]; on the website for the Department of the Interior, the only result for that term points to court filing from litigation filed against the USFWS in 2020 [27][28]. As such, there does not appear to be any program or set of standards within the Department of Agriculture or Department of the Interior defining what this term means in relation to any exotic species, much less big cats.

As such, without a known definition for the term, it is impossible to determine the full impact of this section on exempted exhibitors and federally run facilities. USDA-licensed facilities could potentially lose their exemption if even some of their management of big cats falls outside the definition of humane husbandry. *See: Impact of Credible Facilities Losing Exemption.* Since the term has no currently determinable boundaries, and its application to big cats is not defined in any official regulation or website, it is impossible to make a confident prediction about how many facilities might at some time engage in activity that run afoul of this section of the bill.

"In good standing [with the USDA]"

> *"[...] an entity exhibiting animals to the public under a Class C license from the Department of Agriculture, or a Federal facility registered with the Department of Agriculture that exhibits animals, if such entity or facility holds such license or registration in* ***good standing*** *and if the entity or facility -"*

This term is crucial for USDA-licensed facilities' exemption from the prohibitions of the bill, but does not have any public-facing definition. It's found throughout USDA language across many different contexts, so it's reasonable to assume the agency itself does have a definition that they use. However, the impact of this bill cannot be determined without knowing how this term is functionally implemented, as it is foundational to the most widely applicable exemption category.

Problems that are identified at a USDA-licensed facility during an inspection vary radically in severity from very minor issues that are resolved during the inspection,[4] and are therefore not even documented within the licensee's inspection report, to "critical" or "direct" non-compliances that indicate an issue that is having "a serious or severe adverse effect on the welfare of an animal or has the high potential to have that effect in the immediate future."[29] It is not uncommon for even the most well-respected, professional

[4] *"Teachable Moments (TM) are minor NCIs identified during an inspection that meet certain criteria and are not cited on an Inspection Report. Cite any noncompliance that is causing noticeable pain or distress to an animal on the Inspection Report."* [30]

licensed facilities to have inspection records that document issues that needed to be addressed but did not directly impact animal welfare.[5]

Guidance from USDA on what type, frequency, or repetition of compliances will result in a licensee's loss of good standing has not been forthcoming;[6] it is equally unclear what is required for an entity that has lost good standing to regain it.

This means that it is currently unknown what issues during inspection could cause a USDA licensee to lose their good standing with the agency - and therefore potentially their exemption. The full impact of such a loss of exemption is unclear, but has the potential to have drastic consequences for the sanctuary and all of the big cats they hold. *See: Impact of Credible Facilities Losing Exemption*. Depending on the definition of the term, the number of impacted facilities impacted by this bill could change drastically. If just a single indirect noncompliance is enough to lose good standing, many exhibitors would be constantly at risk of losing their exemption and ability to maintain big cats, while if good standing is only lost when formal action is taken against an exhibitor by the agency for repeated critical noncompliance, the majority of animal exhibitors would not be impacted by the bill.

"Commercial activity" / "Commercial Trade"

> *"[…] directly supporting conservation programs of the entity or facility, the contact is not in the course of* ***commercial activity*** *(which may be evidenced by advertisement or promotion of such activity or other relevant evidence), and the contact is incidental to humane husbandry conducted pursuant to a species-specific, publicly available, peer-edited population management plan that has been provided to the Secretary with justifications that the plan—"*
>
> *"[…] does not* ***commercially trade*** *in any prohibited wildlife species, including offspring, parts, and byproducts of such animals;"*

Versions of this term show up twice in the bill, within different exemption categories. Neither term is defined within the bill, meaning definitions will likely be drawn from similar or related legislation as the concept of commercial use of wildlife is far more complicated than could be covered by a common-sense definition.

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[5] *"A noncompliance that is not designated as a direct NCI is something that is not having a serious or severe impact on the welfare of an animal at the time of inspection – such as a clogged drain outside an animal enclosure."* [30]

[6] As of 9/14/2020, no response had been received from the Ask USDA Contact Center in response to a query about the internal definition of the term "in good standing" and the requirements to maintain it.

- The Endangered Species Act defines 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 purpose of facilitating such buying and selling: Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations*."[31]

- The Animal Welfare Act does not define "commercial activity", but defines the activities that constitute commerce as: *"trade, traffic, transportation, or other commerce."*[18]

It is unclear which law or precedent a definition of "commercial activity" might be drawn from for the purpose of enforcement of this bill. However, both appear to have a similar definition: when dealing with live animals (which are considered property in the United States, and therefore commodities[7] [33][34]), that any activity of industry or trade is effectively considered commercial activity. Although many people don't think of them in this way, the normal operations of zoos and sanctuaries fall under most definitions of commercial activity. They are businesses, and even when run by non-profit organizations they still operate commercially, earning revenue from practices like ticket sales and gift shop purchases. Many of the normal procedures that involve contact with big cats might therefore also be at risk under this requirement, depending on how closely related they are to the more obviously commercial activity.

The promotion of H.R. 1380 seems to contemplate only prohibiting the case of "pay to play" schemes in which individuals pay money to pet a big cat, but even the parenthetical comment in the bill's language does not come anywhere close to limiting its strictures so narrowly. It says that commercial activity "may be evidenced by advertisement or promotion of such activity or other relevant evidence," but this does not apply any reassuring limits, since it's effectively saying it "may be evidenced… by relevant evidence." Anything connected to commercial activity would therefore be potentially disallowed.

In addition to the intended effect of prohibiting the blatantly commercialized "pay to play" schemes that the bill's champions oppose, this term could also cause problems for reputable zoos by disallowing any procedure involving contact with a big cat that is tenuously connected to their normal (commercial) operations. There is also a substantial grey area - for example, many accredited zoos currently allow particularly high-profile donors, officials, and celebrities to meet young cats,[8,9,10] which this bill's language

[7] While the ESA does define exhibition of "commodities" by museums or similar cultural or historical organizations as exempt from commercial activity, it is likely that this is mainly in reference to specimens derived from deceased endangered animals. Zoological institutions and/or sanctuaries that exhibit live endangered animals to the public must hold a USDA Class C license, a category which is specifically predicated on the fact that the main business activity of these entities is exhibition.

[8] *"Yeah, that's a baby clouded leopard!! Shout out to the @nashvillezoo who is doing SO MUCH for these beautiful creatures and so many other animals."* Kimberly Williams-Paisley on Instagram (Photo shows Kimberly Williams-Paisley holding a clouded leopard cub in her arms.) [35]

[9] Betty White's Big Cats (Photo shows Betty White touching a clouded leopard at the San Diego Zoo.) [36]

[10] *"Onondaga County Executive Ryan McMahon came to the zoo Wednesday to observe the new Amur leopard cubs' first health checks"* Amur leopard cubs – most endangered big cats -- born at Rosamond Gifford Zoo (Photo shows McMahon touching a leopard cub held by a staffer.) [37]

would take as justification for revoking the facility's exemption. The full impact of such a loss of exemption is unclear, but has the potential to have drastic consequences for a facility and all of the big cats they hold. *See: Impact of Credible Facilities Losing Exemption*

"Byproducts"

> *"[...] does not commercially trade in any prohibited wildlife species, including offspring, parts, and **byproducts** of such animals;"*

Byproducts is another term with a seemingly apparent common meaning that will become an issue as utilized in this bill without an exact definition. Byproducts as a term in wildlife law is generally used to address any part of or from an animal, as well as anything created by it. The term is used in the Endangered Species Act, but not defined within it. This becomes an issue when addressing naturally shed "byproducts" of animals, such as loose fur, claw caps, and feces. Many sanctuaries that would normally qualify for exception might find this bill unexpectedly restrictive, as many currently conduct commercial activity involving trade in "harmless" byproducts.

Under H.R. 1380, the exemption for wildlife sanctuaries prohibits facilities from "commercially trading" in "[live or dead big cats], including offspring, parts, or byproducts." Many of the items currently viewed as harmless gift shop offerings at wildlife sanctuaries might come under scrutiny, potentially threatening the legal status of these facilities. For example, animal paintings (paint put on canvas by the animals themselves) are a common gift shop item for many sanctuaries [38][39], and the paint frequently traps shed byproducts such as fur and claw caps. It is not clear if the implementation of this bill would result in a questionable legal status for these items, meaning facilities might be forced to reduce their gift shop offerings or lose qualification for their wildlife sanctuary exemption.

Ambiguous Definitions

This section will explore the importance and potential impact of ambiguously defined terms within the bill. The section of the text relevant to each definition has been reproduced here in italics, with the term itself highlighted in bold.

"Breed"

> *"The term '**breed**' means to facilitate propagation or reproduction (whether intentionally or negligently), or to fail to prevent propagation or reproduction."*

Even when "breed" is specifically used to refer to propagation or reproduction, the absolutism in this definition could cause problems for facilities whose cats reproduce despite industry-standard precautions. The second part of the definition ("to fail to prevent propagation or reproduction") does not create a "negligence" standard, and instead simply says that, if a facility fails to prevent propagation or reproduction, then by definition it has taken a prohibited action. Therefore, a literal interpretation of this law would find that any reproduction is, by definition, a violation of the law, no matter how many reasonable and prudent precautions a facility had taken.

Many facilities use vasectomies on male big cats to facilitate group housing and species-appropriate social behavior while preventing pregnancy, but there are rare circumstances in which the procedure proves to have been unsuccessful and a pregnancy has occurred [40][41]. It is unclear if an incident like this would be considered a violation of the prohibitions in this bill, given that the resulting offspring would be the fault of neither intentional breeding nor a lack of effort in attempting to prevent breeding.

Any facility holding big cats in social groups or in proximity to each other, even while taking serious steps to avoid pregnancy, may still find that they very occasionally fail to prevent reproduction through unpredictable accidents or birth control failure. This has happened occasionally in the past and will no doubt occur in the future. If USFWS chooses to be stringent in enforcing the law in these anomalous situations, it could cause responsible sanctuaries to lose their exemption, as one of the requirements for that exemption category prohibits sanctuaries from "[breeding] any prohibited wildlife species." The full impact of such a loss of exemption is unclear, but has the potential to have drastic consequences for the sanctuary and all of the big cats they hold. *See: Impact of Credible Facilities Losing Exemption*

“Publicly available”

> *“[…] directly supporting conservation programs of the entity or facility, the contact is not in the course of commercial activity (which may be evidenced by advertisement or promotion of such activity or other relevant evidence), and the contact is incidental to humane husbandry conducted pursuant to a species-specific,* ***publicly available****, peer-edited population management plan that has been provided to the Secretary with justifications that the plan—”*

This definition, along with the following two discussed in this section, falls within the paragraph of requirements for a USDA-licensed facility allowing non-veterinarians and non-staff members (such as other professionals volunteering their services) to have physical contact with a big cat. It is a restriction that would also require the most changes for USDA-licensed facilities that might wish to continue current promotional practices such as allowing particularly high-profile donors, officials, and celebrities to meet young cats. Some of the requirements in the paragraph, including that all contact be pursuant to management plans that are publicly available, are more significant than they first appear.

Much of the information regarding animal data, breeding plans, and future transfers may be sensitive or considered proprietary. As such, much of the data and internal documents from exotic animal breeding and management plans run by groups in the United States (such as the AZA’s Species Survival Plans (SSPs)) are restricted to a limited distribution. It is currently unclear how much of the documentation involved in a population management plan would be required to be publicly available. It is also currently unclear if the submission of breeding and management plans to the appropriate Secretary would result in those documents being discoverable through Freedom of Information Act requests, and therefore inherently “publicly available.”

It is probable that current practices would not be enough for a facility to be considered in compliance with H.R. 1380’s requirement that these plans be "public." Even a relatively moderate application of this requirement could easily cause some degree of sensitive or proprietary information to be made public, either by requiring that it be published to a public audience initially or by making it discoverable through submission to the Secretary of the Interior. Facilities already take into account the known risk of interference from protestors during animal transport, so some of the information contained in internal documents might expose future animal transport to additional interference by those who use disruptive or dangerous action to express disagreement with the choices made by the involved parties.

"Established conservation science principles"

> *"[...] directly supporting conservation programs of the entity or facility, the contact is not in the course of commercial activity (which may be evidenced by advertisement or promotion of such activity or other relevant evidence), and the contact is incidental to humane husbandry conducted pursuant to a species-specific, publicly available, peer-edited population management plan that has been provided to the Secretary with justifications that the plan — (aa) reflects* ***established conservation science principles****;"*

It is impossible to conclusively determine the impact of this phrase on entities seeking the exemption that allows them to facilitate incidental contact with big cats, as there is no universally agreed-upon authority that defines established conservation science principles in relation to the breeding and captive management of endangered megafauna. Furthermore, conservation science is a constantly evolving field and any such identified standards are subject to frequent change and variation in accordance with current environmental and political priorities. It is unclear if USFWS would employ an internal definition of established conservation science principles to assess compliance with this section, or if the expertise of an external authority would be utilized.

Each possible source for a definition of this term (e.g. USFWS, industry stakeholders, conservation groups, and animal advocacy groups) has a different philosophy about what constitutes appropriate conservation science principles for the breeding and captive management of big cats, so any number of facilities might find that their current approach is at odds with the definition picked by a regulatory entity. Organizations with established conservation breeding plans may not be nimble enough to restructure entire multi-facility programs in response to a regulatory entity's definition of conservation principles; facilities that have made a significant financial commitment to a particular conservation ethos may find it difficult or impossible to accommodate changes that impact their business operations and long-term investments.

As such, selection of any single definition will likely result in some facilities inevitably facing accusations that they are using approaches that do not match the selected definition. Regardless of the definition chosen, groups who wish that every form of interaction with big cats was banned will be given opportunities to harass entities that are using big cats for limited interactions at all, even if they are used in ways that are otherwise allowed by the bill. Many accredited facilities could therefore be at risk of being forced to cease their fundraising and promotional activities in order to remain exempt if USFWS determines that non-medical incidental contact is antithetical to conservation principles.

"Frequency of breeding is appropriate for the species"

> *"[...] directly supporting conservation programs of the entity or facility, the contact is not in the course of commercial activity (which may be evidenced by advertisement or promotion of such activity or other relevant evidence), and the contact is incidental to humane husbandry conducted pursuant to a species-specific, publicly available, peer-edited population management plan that has been provided to the Secretary with justifications that the plan — [...] (cc) promotes animal welfare by ensuring that the* ***frequency of breeding is appropriate for the species.****"*

As in the previous section, the impact of this phrase on facilities that allow any non-veterinarian and non-staff contact with big cats is difficult to foresee. Establishing a metric for the appropriate breeding frequency of big cats requires identifying an authority to make such a determination. The reproductive behaviors of many species differ in captivity and the wild, which may preclude the identification of a frequency that is correct across a wide range of management situations.

It is unclear if USFWS would employ internal expertise to determine compliance with this section; the only USFWS involvement with big cat population management programs is focused on cougars, which does not necessarily apply to other big cat species. If an external authority's expertise is utilized in lieu of USFWS developing an internal metric, the same problems arise as in the previous section: it requires determining which expert to consult, and differing stakeholder philosophies will likely result regardless of what is chosen. This would leave any facilities wishing to facilitate incidental contact with big cats unable to confidently predict what requirements or philosophy would be required of their management plan.

Implementation Issues with H.R. 1380

Overlapping Exemption Categories

A literal reading of the bill implies that a facility needs to follow only the requirements of a single exemption category in order to be exempt (because of the use of the word "or" before the final exemption category). There are many entities that could fall into multiple exemption categories, and are therefore at risk of having a vastly different burden placed upon them depending on how their situations are treated by regulatory agencies. For example, the exemptions for USDA-licensed facilities and for sanctuaries contain separate and distinct criteria that must be met, but since almost all wildlife sanctuaries housing big cats in the United States also maintain USDA Class C licenses in order to generate revenue from visitors, it is unclear which set or sets of requirements would apply to these businesses.

Since the criteria for the exemption categories differ drastically in the extent of restrictions placed on a facility, it is necessary to determine which exemption would apply to a facility that could qualify for more than one exemption category. It's not clear whether, in implementation, a facility would be required to fulfill the criteria for the most restrictive exemption, the one the facility choses, or both. If a facility qualifies for two exemptions, and violates the criteria for one, they might or might not be protected from losing their exemption or from subsequent penalties. *See: Impact of Credible Facilities Losing Exemption.*

A significantly higher burden would be placed on entities holding big cats if USFWS promulgated rules requiring that a facility follow the requirements of every exemption category that could apply to it. This would have the largest impact on USDA-licensed wildlife sanctuaries, since they would then need to adhere to two sets of disparate requirements. The criteria for a wildlife sanctuary are much less stringent than those for licensed exhibitors, and the former appear to be written in a way that is tailored to the current operations of most big cat sanctuaries in the country; as such, if sanctuaries with USDA licenses were required to also meet the licensed exhibitor set of criteria, many sanctuaries would face significant logistical and financial burdens in adapting their operation to fulfill the new restrictions. Given the vast differences between the requirements set forth for licensed exhibitors and wildlife sanctuaries under H.R. 1380, the impact of this bill on sanctuary businesses is impossible to confidently estimate without resolving this question, nor can we say how many would be able to be in compliance, even after the grace period is over.

Major Combined Impact of "Public" and "Sufficient Barrier" Requirements

When put together, the unanswered questions in the definitions of "public" and the barrier requirement could require major redesigns and staffing changes for most sanctuaries and zoos, adding further expenses or hurdles to continued operation. The requirement for "barriers sufficient to prevent public contact" is written with language similar to USDA's requirements for acceptable public barriers, but there is no guarantee it will be implemented analogously. A strict interpretation of the word "prevent" could require

physically impermeable primary fencing (*See: "Permanent barrier sufficient to prevent public contact"*), as secondary (pathway) fencing is occasionally crossed by deliberately disruptive guests at facilities [42] in order to touch or get close to big cats [43] and therefore might not qualify as a "sufficient barrier." If interpreted this way by USFWS, USDA-licensed facilities would have to replace exhibit fencing or move pathways to a 15-foot distance from the primary exhibit fencing in order to be exempt; this would create a major financial hardship for many exhibitors as it would require complete renovation of big cat exhibits and all of their surrounding areas.

Even a less strict interpretation of the phrase "sufficient to prevent public contact" might require facilities to alter primary fencing (e.g., to mesh with a smaller hole size) or secondary pathway fencing (e.g., to prevent determined guests from being able to climb over or through). In any interpretation that is stricter than the current USDA regulations regarding public barriers requirements, popular big cat exhibit features, such as training walls, may be prohibited due to the combination of technically permeable fencing and guest proximity inherent to those features.

The more stringent interpretations of this requirement would likely require almost all USDA-licensed facilities to significantly modify both their enclosure fencing and the design of their visitor areas, which is likely to be prohibitively expensive for most facilities in both the short and the long term. Alterations to exhibition construction and the guest space surrounding it after the original construction are exceedingly complicated, as a multitude of considerations such as landscaping, utilities, and security are affected. The types of alterations that a strict interpretation of this bill would require are likely to have an outsized financial cost on impacted facilities, as truly physically impermeable exhibit construction materials like plexiglass windows must be custom-ordered to fit each space. In addition to this up-front cost that facilities would have to bear in order to meet the criteria for exemption, redesigns of this type would permanently increase the cost of maintenance and repairs by requiring a transition to materials that cannot be easily or efficiently replaced if damaged.

H.R. 1380 may also impact the function of areas primarily designed for staff at these same facilities. Most non-public spaces, including staff walkways between exhibits and buildings that provide indoor or night-time big cat housing, are not designed with 15-foot clearances around the primary enclosure fencing and do not have secondary barriers, since the only people allowed in those areas are either trained to follow the appropriate safety protocols or are chaperoned by someone who is. Depending on the definition of "sufficient" barriers implemented, public behind-the-scenes tours might be severely restricted, as those tours are considered to be a type of "public exhibition" and, due to the existing construction, most USDA-licensed facilities would not be able to provide enough space to meet the new requirement. Depending on how "the public" is defined (*See: "[The] public"*), these same space limitations might prevent interns and volunteers from being allowed to enter or work in big cat buildings entirely.

Wildlife sanctuaries that also maintain a USDA license may be the most impacted of all by a strict interpretation of many terms within the bill, if required to meet the exemption criteria for USDA-licensed facilities. *See: Overlapping Exemption Categories*. The specific definitions chosen by regulatory authorities during implementation for "the public" and "sufficient barriers" could have an outsized impact on sanctuary function and financial viability. Many wildlife sanctuaries rely on the work of "staff level" volunteers; these are

often highly trained, trusted team members who work directly with the cats alongside paid staff. If volunteers are determined to be members of the public, H.R. 1380 would prevent them from performing the majority of their volunteer duties. They would no longer be allowed to have any physical contact with the cats, including assisting with medical exams or during the course of training and regular husbandry routines. Depending on the definition of a "sufficient barrier," these volunteers might not even be allowed to approach animals at fence lines (e.g. to do required daily visual observations) or use staff pathways that pass between or along primary exhibit fencing.

Inconsistent Safety Requirements

While ensuring public safety has long been a major motivation for H.R. 1380's sponsors and proponents,[11,12,13] the bill itself applies safety regulations inconsistently to the encompassed entities and does not appear to be supported by a risk assessment of various management scenarios. A big cat is no less inherently capable of causing harm when managed in a sanctuary environment than in a circus; while different management practices may result in staff and members of the public being exposed to different levels of risk, no entity's management practices and philosophy completely mitigate the necessity of protocols that reduce the possibility of injury or death when big cats are kept in any proximity to humans [46]. If the presence of a big cat means that a certain safety protocol would be required by H.R. 1380 to protect the public, it seems logical that the same safety protocols should be required of all institutions that hold big cats at publicly-accessible facilities.

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[11] *"Private ownership of big cats raises significant public safety, animal welfare, and conservation concerns. It is estimated that thousands of big cats – including lions, tigers, leopards, cheetahs, jaguars, and cougars – are privately owned and held captive in insecure and unsafe conditions. Cub-handling attractions and petting zoos cause irreparable harm to the cubs, which are often separated from their mothers at an extremely young age, and pose a danger to humans, who may be bitten or scratched. There have been more than 700 incidents in the United States involving big cats, including hundreds of human injuries, maulings and deaths."* - Feinstein, Blumenthal, Colleagues Introduce Bills to Ban Private Ownership, Trade of Big Cats, Primates [44]

[12] "*Tigers, lions, and other big cats should not be kept in peoples' homes or backyards. In order to protect the public, there needs to be strong oversight of these private owners who, in most cases, do not have the expertise needed to properly care for these animals in captivity. Some states have little to no laws regarding the keeping of big cats and it's time for a uniform federal law that ends this dangerous industry once and for all." Nicole Paquette, Humane Society of the United States, as quoted in* Animal welfare coalition applauds reintroduction of "Big Cat Public Safety Act" to prohibit private ownership of dangerous big cats [45]

[13] *"This common sense and narrowly-crafted bill is an urgently-needed solution to the problem of big cats kept in unsafe and abusive situations around the country. Thousands of big cats are currently owned as pets or maintained in ill-equipped roadside zoos. These poorly regulated facilities—with animals kept in basements, cement pits, or in backyards—pose a severe risk to the safety of people in surrounding communities, as well as the welfare of the cats themselves."* Kate Dylewsky, Born Free USA, as quoted in "Animal welfare coalition applauds reintroduction of "Big Cat Public Safety Act" to prohibit private ownership of dangerous big cats [45]

As H.R. 1380 is currently written, USDA-licensed facilities must meet the most stringent standards regarding most of the species prohibited within the bill, but the wildlife sanctuary exemption would not require sanctuaries to take the same precautions with any of the species they house. It is unclear if this is intentional because the only people endangered by big cats at sanctuaries that are not open to the public are trained staff and volunteers, or if this is simply the result of an assumption that different business types will have different management practices that create different levels of safety. State veterinarians, state colleges, and state universities have no safety criteria they must meet in order to own or breed big cats. While the few living mascot exhibits for big cats at colleges in the US maintain a USDA Class C license and would therefore have to meet the more stringent criteria [47][48], H.R. 1380's language leaves a loophole allowing persons or entities associated with a state university to acquire dangerous big cats and keep or breed them for other purposes with no required safety protocols or other oversight as long as the animals were not exhibited to the public.

In addition, two big cat species are notably exempt from the 15-foot distance or sufficient barrier requirement for licensed exhibitors: clouded leopards and cheetahs. While these are sometimes considered less dangerous than other big cat species due to their smaller size and weaker bite strength, they are still entirely capable of inflicting serious injury. The exclusion of cheetahs and clouded leopards from the safety requirements in this bill may, therefore, be related to the industry's insistence on being allowed to use them as ambassador animals, in addition to any possible assessment of their inherent level of danger. Both of these species are popular ambassador animals for zoos that focus heavily on exhibiting felids, including many accredited by the Association of Zoos and Aquariums. These ambassador cats are frequently used for demonstrations, public events, and photo opportunities while on leash near the public without a permanent fence [49][50][51][52].

Problematic Impacts of H.R. 1380

Implementation & Enforcement Problems

In a meeting in April 2019 with representatives from the Feline Conservation Foundation[14], a staffer for Mike Quigley, the sponsoring Representative, stated that it is not known how H.R. 1380 would be enforced or how facility compliance will be tracked [53]. The staffer indicated in that meeting that Representative Quigley is mainly concerned with the safety and animal welfare issues addressed by the bill, and as such prefers to let the agencies tasked with implementing the bill figure out those aspects once it is passed into law. H.R. 1380 would amend sections of the Lacey Act added by the Captive Wildlife Safety Act that are currently only enforced by the US Fish & Wildlife Service when they are notified of violations. The added provisions of H.R. 1380 would fall under the purview of USFWS as well, and it is unclear if they would be enforced in the same manner.

The text of H.R. 1380 contains no plans or provisions for funding a permitting or inspection process that would ensure facilities meet the new restrictions set forth by the bill. As it stands, it is unclear how USFWS would determine whether a person is in compliance with the new prohibitions in the bill when it is promulgated, or how they would determine continued compliance with criteria required to maintain an exemption from those prohibitions. This type of information would normally be gathered in person, but it is unclear if USFWS has the staffing funding, or ability to support an inspection program. The CBO cost estimate indicates an assumption that enforcement of this bill would be inter-agency, with the regulations determined by USFWS and enforced by USDA through "[revision of] existing regulations." [2] If this were the case, a licensee's compliance would likely be determined during their annual inspection by the USDA; however, it is unclear which agency would receive and investigate complaints about perceived violations. This has the potential to create a complicated and unpredictable regulatory environment, as a large volume of claims reporting entities in violation of their exemption criteria, regardless of accuracy or intent, could overwhelm any federal system for addressing issues with compliance. *See: Undue Regulatory Burden*

Impact of Credible Facilities Losing Exemption

Because the requirements to legally maintain an exemption to the prohibition against big cat ownership are so difficult to pin down with certainty, many facilities will have to contend with the question of what will happen if they accidentally violate one of the criteria for their exemption, or if one of their current exhibits does not meet the new standards as interpreted by USFWS. The ultimate impact of enforcement for these exemptions, and especially the consequences of failing to meet these requirements, is a question that the entire industry rests upon.

[14] Previously the Feline Conservation Federation - the organization's named changed in early 2020.

The bill does not specify what happens when an entity is, at any point, found to be in violation of the criteria required to be exempt from H.R. 1380's prohibitions. As currently written, the most straightforward interpretation of the bill is that any violation of exemption criteria would make it illegal for a facility to possess any big cats. This would, suffice to say, have a catastrophic impact if it occurred to any of the major educational, conservation breeding, or rescue facilities that currently house big cats. Given the ambiguity of many of the terms used in the exemption criteria and the possibility that they might change over time, this scenario is cause for some concern. There is already pressure on agencies to be more strict in their response to any violations of animal-related laws, so low- or zero-tolerance enforcement of the requirements for continued possession of big cats is plausible.

Additionally, it is unclear what would happen to a facility's exempt status if a violation occurs through no fault of their own. Some of the incidents that would constitute a violation of exemption criteria - such as guests jumping barriers to try to touch a big cat - occur fairly frequently at both USDA licensed facilities and sanctuaries [46] (e.g., an accidental breeding at a wildlife sanctuary despite standard precautions, or a guest trespassing and evading security to touch a cat at a USDA-licensed facility), and are often outside of the control of even the most well-intentioned and diligent facilities. While it is likely that some threshold would be determined, there is no assurance of whether a single issue would result in a loss of exemption, or if the new regulatory system would allow for multiple chances and rectification of identified issues the way USDA Animal Care does.

Any established zoo losing its exemption under H.R. 1380 as currently written would no longer be able to participate in breeding plans or transfers involving big cats. This would have an outsized impact on the larger industry's conservation programs, since when big cats move between facilities for breeding, it is traditionally conducted as a loan, rather than a transfer of ownership. If a facility loans out a big cat and then loses its exemption, the facility that was temporarily holding the big cat may not be legally able to transfer the animal back to its original owner without incurring a violation of its own. Facilities might be able to regain an exemption, as can be done with USDA licensure, or disqualification could be final.

Another unknown is what would happen to the big cats housed at a facility that loses its exemption. If its collection contains cats born after the date H.R. 1380 was enacted, they would not be eligible for the "sunset clause" exemption category that would allow them to keep those animals, away from public viewing, for the remaining duration of their lives. The logical conclusion is that a facility losing exemption would be required to relinquish its big cats. Loss of even a few facilities with moderately-sized big cat collections has the potential to create a management crisis, especially when added to the new requirements. Spaces for big cats at zoos in the US are so limited that even a single closure puts strain on the system, and sanctuaries housing big cats may have more physical room to take in animals but often fewer financial resources to offset the short- and long-term costs of large intakes.

A strict, or even a straightforward interpretation of the oversight and exemption mechanism by the assigned regulatory agency would put significant stress on the sanctuary network in the United States by orphaning sizable numbers of big cats at once, and might irrevocably damage conservation breeding programs conducted by reputable zoos.

Bill Being Used to Circumvent Pending Regulatory Decision

Many of the major provisions set forth in H.R. 1380 and in previous iterations of the Big Cat Public Safety Act are currently being addressed by a USDA rule-making process following a petition received in 2013. Responses to the petition by the industry it impacts, and responses by proponents of the proposed rules, are still being considered by USDA after multiple rounds of public comment and discussion in the federal register.

In 2013, a coalition of groups and sanctuaries led by the Humane Society of the United States (HSUS) and the International Federation for Animal Welfare (IFAW) petitioned USDA to adopt new rules on the public handling of big cats, bears, and nonhuman primates [55]. One of the major changes requested to the USDA regulations was the addition of a clear quantitative measure "explicitly prohibiting physical contact and unsafe close contact" with big cats (as well as the other species in the petition) by defining the currently qualitative "sufficient distance" USDA requirement as a minimum of 15 feet, unless "there is a permanent barrier that prevents public contact or risk of contact." [56] Another requested addition was a rule prohibiting licensees from allowing any individual other than a "trained full-time employee" or a "licensed veterinarian (or accompanying veterinary student) to come into direct physical contact with any big cat." [57]

In the fall of 2013, after the petition was announced in the Federal Register, a public comment period was opened by USDA APHIS Animal Care, the entity in charge of enforcing Animal Welfare Act regulations, to solicit comments and concerns about the proposed changes to the regulations [58]. During the approximately three-month-long comment period, over 15,300 comments were received. In June of 2016, the USDA opened a new comment period addressing the same petition, this time seeking clarification on new questions regarding the assertions made in the petition [59]. During that two-month long period, over another 6,000 comments were submitted.

Formal public comment periods on proposed regulations allow the constituents impacted by that change to bring up relevant concerns and impacts for the overseeing regulatory body to consider in its implementation. The sheer number of comments submitted relevant to this petition - over 21,000 in total - and the range of concerns contained in them indicated that the changes proposed by HSUS and IFAW in their 2013 petition were not straightforward and easy to enact. When the comment period re-opened in 2016, it was because USDA sought further clarity on topics relevant to determining whether the regulations should be amended. This means after three years of reviewing the issues, the agency still did not have enough information to reach a conclusion based on "scientific data, expert opinions, and facts." [60] Four years since that comment period closed, according to all indications, the topic is still in active consideration within USDA.

H.R. 1380 steps into the middle of this debate by introducing a variety of provisions that intersect with rules that are currently under active consideration by the USDA. The first iteration of the Big Cat Public Safety Act was introduced in 2012 [61]. It is actively promoted by many of the groups who sponsored the 2013 petition, and a number of them have been heavily involved in the drafting of the current bill text. Notably, H.R. 1380 has been written to include two provisions that are equivalent to what these groups tried to accomplish via petition in 2013. It is obvious that the issue of if or how the suggested prohibitions might be implemented is a complex and nuanced topic, as USDA has taken close to a decade to consider the relevant information. It is unclear if the myriad of considerations raised in the public comment period have been communicated to the legislators sponsoring H.R. 1380, or if they have been in communication with USDA to understand its current thought process regarding the proposed prohibitions and how it would impact lawfully licensed and regulated entities.

Undue Regulatory Burden

On the surface, H.R. 1380 may seem like an easy bill to implement: its prohibitions seem straightforward at first glance, they dovetail nicely with the existing language in the law it amends, and the majority of the complicated restrictions are within the exemption categories. A closer understanding of just what it takes to create the systems necessary for implementation of those regulations, however, indicates that this bill may create a much larger burden on regulatory agencies than expected.

As with the promulgation of any new law, the Administrative Procedure Act requires that USFWS publish a Notice of Proposed Rulemaking in the Federal Register and accept public comments regarding the proposed regulations for consideration in process [60]. Unlike with most pieces of legislation, a very similar rulemaking process has already been conducted by USDA regarding a number of the main prohibitions contained within H.R. 1380. *See: Bill Being Used to Circumvent Pending Regulatory Decision.* The massive amount of public interest in the petition proposing two nearly identical provisions is likely an indicator of the amount of attention the rulemaking process for H.R. 1380 would attract. Over 21,000 comments were submitted during the USDA petition's comment period of 2012 to 2016 - prior to the topics being popularized by media such as the Tiger King Netflix series. Given the current cultural interest in the welfare of big cats, as well as the media frenzy around anything related to Tiger King, the rule-making process for H.R. 1380 is likely to be just as protracted and necessitate multiple comment periods and rounds of clarification. It is unclear if USFWS would be allowed to rely upon any of the comments and internal research from the similar USDA rulemaking process.

Even once the final rule for H.R. 1380 has been published, the new regulations might be challenged in court, as entities who own big cats privately may want to litigate over a perception that the ruling was arbitrary and capricious, or an abuse of the agency's discretion.

Once the regulations pursuant to H.R. 1380 are promulgated, resources from at least one department will need to be expended to implement them successfully. USFWS will need to create a database capable of

registering all currently living big cats belonging to private owners that are not otherwise exempt, and then determine how to identify all the animals that need to be registered. Experts commonly estimate a minimum 5,000 big cats being in private hands in the United States, most of whom are assumed to be outside of regulatory oversight, so this process will require a non-trivial amount of effort. In addition, all entities holding big cats that can or could qualify for exemption must be identified, inspected for compliance, and informed about the necessary changes required to fulfill their set of exemption criteria. According to the CBO cost estimate, there are approximately 360 USDA-licensed facilities that would require an in-person inspection; an unknown number of sanctuaries and breeding facilities that are not USDA-licensed would have to be identified and included in this assessment as well. It is unclear from the current wording of the bill if this work would be done by USFWS or delegated to USDA, but, regardless, the resources required to conduct hundreds of site visits must be taken into consideration.

Entities that are able gain exemption from the new regulations will require regular oversight to ensure continued compliance. The CBO cost estimate indicates it is assumed that this responsibility will be delegated to USDA as part of their licensing and inspection process, which would result in a significantly lower added regulatory burden than if USFWS was responsible for the process. It is unclear how continued compliance by private owners who were allowed to keep their current big cats would be tracked, as USDA likely does not have the resources to inspect thousands more entities each year.

The Captive Wildlife Safety Act, which created the language that H.R. 1380 would amend, does not have any capacity for active oversight and is therefore only enforced by USFWS on a complaint basis, so it is plausible that the agency would choose to follow the same strategy with this bill. However, similar complaint-based systems are already frequently weaponized against facilities holding big cats, due to the high level of public concern regarding their welfare and the level of activism against perceived “unethical” institutions encouraged by activist groups. A reporting system similar to the one used in this way by USDA, or one facilitated through the USDA Animal Care system, could require extensive resources to adequately investigate and follow up on a large number of submitted complaints.

Complete Cost Unknown

While a full analysis of the Congressional Budget Office (CBO) estimate for H.R. 1380 is beyond the scope of this paper, it is important to note that it was unable to determine the financial cost to impacted stakeholders for the broadest and most impactful section of the bill’s prohibitions.

The CBO cost estimate explicitly said that it didn’t have the requisite data to address some of the most expensive aspects of the bill for entities holding big cats, and many other costs of the proposed regulations were, similarly, completely omitted [2].

The language in the cost estimate indicated that it may have relied upon interpretations of the bill that do not include the full range of requirements as interpreted by the enforcing agency. For instance, when

referring to fencing requirements, it stated that exhibitors would simply need to "maintain a 15-foot gap between the public and the animals or erect a permanent barrier," which is potentially a very different concept from "a permanent barrier sufficient to prevent public contact" as written in the bill. *See: "Permanent barrier sufficient to prevent public contact"*

The CBO also stated that it did not have the data necessary to determine the number of facilities that would have to come into compliance with the "sufficient barrier" rules. While exact scope cannot be fully understood until USFWS has determined their definition of the concept, it is unclear if any attempt was made by the CBO or bill proponents to contact stakeholders and begin to determine the extent of the prospective impact of the new regulation. Without any of this information, there is no way to begin assessing the cost of coming into compliance on impacted stakeholders.

Depending on the USFWS interpretation of the "sufficient barrier" requirement, the financial impact to each big cat facility could range from minimal to prohibitively expensive; as facilities of this type begin raising funding for major exhibit renovations years before construction begins, a truly comprehensive cost assessment would have to take into account the feasibility of both raising the funds required to come into compliance and completing the construction in the duration of any grace period provided. This potentially massive expense, required in order to continue legally operating, comes at a time when all types of exotic animal facilities have already seen a drastic decrease in both revenue and donations due to COVID-19. What might have been financially feasible in previous years may now be prohibitively expensive, which would force facilities to close these exhibits and end their conservation breeding work entirely by rehoming their big cats.

The CBO also identified the possibility for future revenue loss by entities who are not able to continue acquiring or breeding new big cats, but it could not determine the extent of that financial loss due to a lack of available data and the large amount of variables that impact business function and revenue. Further, the CBO did not consider the other possible impacts that that loss of revenue could have on the relevant stakeholders. Big cats, as living beings with a variety of husbandry needs, are expensive to feed and house, and entities that can no longer recoup the expense of owning them may choose to divest from the species rather than keep them at a financial loss. A full cost assessment of the impacts of this bill would also need to consider the costs of rehoming these animals, which include but are not limited to enclosure construction, transport costs, and lifelong care. The facilities that are most likely to absorb displaced big cats are wildlife sanctuaries, which have more limited budgets than other animal exhibitors and are highly dependent on donation for operating costs; it is important to consider that a large movement of big cats into sanctuaries as a result of H.R. 1380 could possible place the entire rescue system under extreme financial pressure. *See: Impact of Credible Facilities Losing Exemption*

In addition to the immediate monetary impacts of implementing H.R. 1380, the CBO also did not address the cost of the loss of labor and marketing as a result of the bill's combined restrictions. If the definitions chosen by USFWS result in interns and volunteers being banned from working in close proximity to big cats, many zoos and almost every wildlife sanctuary housing these species in the United States will be severely financially impacted. Volunteer and intern labor allows facilities with limited budgets or donation-dependent finances to continue operating without having to provide wages for large numbers of

employees. Compensating for the loss of such a volume of labor would likely push many wildlife sanctuaries into insolvency.

While the CBO did calculate an assumed loss of revenue due to the prohibitions against allowing direct contact with big cats in an explicitly commercial capacity, it did not address the potential for indirect revenue loss from some of the other prohibitions in the bill. Marketing and fund-raising activities that do not involve direct contact with big cats, such as media features and paid behind-the-scenes tours, could easily be impacted by the chosen definitions of key terms. While the financial contributions of these types of operations are harder to calculate, they are often a key part of fundraising efforts and courting important donors; being unable to continue these activities would have a major financial impact on many exhibiting sanctuaries and zoos.

The CBO assessment was only partially able to determine the cost of USFWS creating and implementing a registry for non-exempt entities owning big cats, but the costs included may be an underestimate. It was acknowledged by the CBO that the number of animals requiring registration is unknown, but experts frequently estimate around 5,000 - 10,000 pet tigers in the United States [62][63] and there are no concrete estimations of the number of big cats of other species.

The CBO also used an assumption that, as most states already have some type of restrictions on big cat ownership, violations of the prohibitions in H.R. 1380 requiring enforcement action would be infrequent [2]. However, the promotion of the bill for the last eight years has specifically contradicted this assumption by emphasizing instead that the majority of private owners are assumed to be external from state-level oversight [64], which would mean that the projected cost of enforcement in the assessment is too low.

The CBO assessment also did not address a number of costs related to the implementation of H.R. 1380's proposed regulations. It noted that the USDA would be responsible for approving the "population management and care [plans][15]" [2] of facilities that maintain the USDA-license exemption. There is no assumed cost given for this oversight in the cost assessment, even though it will require resources and time to implement. It also does not include an assessment of the additional funding required for whichever agency is responsible for facilitating a reporting system and investigating claims that facilities are acting in violation of their exemption criteria. If this system has similar results to the USDA Animal Care complaint system, complaints requiring in-person follow-up will not be uncommon; given the current activist scrutiny of big cat management practices and the widespread public investment in the issue, it would not be unreasonable to expect such a reporting system to be frequently utilized.

[15] The CBO assessment notes that having an approved population management plan is a requirement for gaining a USDA-license exemption from H.R. 1380; a strict reading of the bill finds that having such a plan created and approved is only required if a licensee is allowing members of the public to have incidental contact with their big cat species.

Results Do Not Match Public Expectations

H.R. 1380 gained the bulk of its recent attention and public support from messages about it in the Netflix series Tiger King in the spring of 2020 [66]. However, it is important to note that the representation of the bill in that series and the subsequent media attention that followed was inaccurate. The explicit impacts guaranteed by H.R. 1380 are very different from what viewers were led to expect.

The messaging presented to the general public made guarantees that H.R. 1380 would prevent the private ownership of big cats, prevent big cats from being touched by members of the public, and impose new safety rules around the management of big cats. The current prohibitions as set forth in the bill would not fully achieve any of these stated goals.

> *"Thousands of big cats languish in backyards as "pets" while roadside zoos who offer cub petting and photo ops incessantly breed cubs that are ripped from their mothers at birth, physically punished, and deprived of sleep with no tracking of where they end up or how many die in the process.*
>
> *The only solution is to pass the Big Cat Public Safety Act H.R.1380/S.2561 - federal legislation that would end owning big cats as pets and stop cub petting, two major sources of big cat abuse."*
>
> Make the Call of the Wild - Big Cat Rescue [67]

The public has been promised that H.R. 1380 will end individual ownership of big cats. While the bill would prevent private citizens from acquiring, breeding, or selling big cats in the future, it would *not* remove big cats currently in private ownership situations. Existing "pet" or privately owned big cats would be allowed under a "sunset clause" in the law and would remain in those situations conditionally based on the conduct of their owners. *See: Structure of the Changes Made by H.R. 1380 - Exemptions*

Similarly, supporters of H.R. 1380 have been assured that it will prevent facilities that breed big cats from letting members of the public touch cubs. While the bill would prevent some of the entities exhibiting big cats from using them in obviously commercial programs such as "cub petting" or "pay to play" photo ops, it would not prevent *all* exhibitors from allowing members of the public to interact with their big cats. Exceptions exist within the bill that allow exempt entities involved in programs such as the Association of Zoos and Aquariums' Species Survival Programs (SSPs) to continue having select individuals touch big cats. While this exemption was likely included to allow visiting industry professionals to donate their skills to an institution, it also allows for the continued practice of inviting high-profile donors, officials, and celebrities to have a chance to touch a big cat cub during their visit. *See: "Commercial activity" / "Commercial Trade"*

Since the original Big Cat Public Safety Act bill was introduced in 2012, sponsors and proponents have said that it would protect the public by ending the irresponsible management practices that allowed for escapes and attacks to occur. While H.R. 1380 would impose new safety rules regarding how USDA-licensed exhibitors manage big cats, it would *not* require wildlife sanctuaries or state-operated entities holding big cats to follow the same stringent safety rules. Even though promotional messaging surrounding the bill over the years has described the biggest safety risk as being posed by irresponsible private owners, H.R. 1380 imposes zero safety protocols as part of the criteria for private owners to register and keep their current animals. *See: Inconsistent Safety Requirements*

In addition to these major concerns, H.R. 1380 simply fails to fulfill the general expectation that it will ensure the quality of big cat management practices. It allows all of the current privately held big cats in the United States to continue existing without federal animal welfare oversight as long as they're registered with USFWS. It even allows sanctuaries to avoid accountability simply by refusing access to the public and therefore evading the safety requirements or oversight associated with USDA licensure.

Conclusions

The original intent of H.R. 1380 was to reduce the number of big cats in "pet" homes and to end the exploitative use of big cat cubs in pay-to-play situations. However, the expansive and often undefined requirements in the bill also create a situation which might have catastrophic consequences for the conservation breeding programs of responsible zoos and risks the financial viability of the very sanctuaries housing many big cats rescued from unhealthy situations.

Depending on the regulatory impact of language in the bill regarding barriers, members of the public, and other requirements, the changes needed in order to qualify for exemption could have a major impact on the financial and logistical operations of even the most credible zoos and sanctuaries around the country. This lack of clarity should concern legislators interested in co-signing the bill, as it is currently impossible for them to confidently guarantee their constituents that the passage of H.R. 1380 won't damage valued local wildlife sanctuaries and zoological institutions.

The cumulative impacts of H.R. 1380's currently-unknown interpretation have the potential to touch almost every aspect of how big cats are managed in the United States. Zoos that have invested in extensive conservation work might be be forced to repurpose significant amounts of funding away from in-situ conservation efforts and into exhibit renovation simply to meet the new "sufficient barrier" requirements, even if the existing construction was previously approved by USDA Animal Care and has never been breached by the public.

Facilities that rely on skilled volunteer labor, such as smaller zoos and almost all wildlife sanctuaries, might fall under unbearable financial strain if required to replace volunteers with paid employees in order to comply with the distance big cats must be kept from members of the "public." Carnivore internship programs - the main way that aspiring keepers gain the required experience for getting hired by the industry - might be effectively ended if they are included in the prohibitions that keep "the public" out of staff spaces that are not built to the new "sufficient barrier" standard.

The wide range of interpretations of the language within H.R. 1380 has the potential to touch even the aspects of facility function that seem far outside the scope of the bill's intentions. The prohibition against non-employees and non-veterinarians touching big cats might prevent a facility from bringing in outside non-veterinary medical specialists to perform important procedures normally conducted on humans, such as root canals, unless they meet further requirements for extensive and ambiguously-defined public management plans. Wildlife sanctuaries might lose a significant amount of revenue from reduced gift shop and charity auction offerings if prevented from selling items such as animal art due to the exemption criteria that prohibits them from trafficking in "byproducts." Public tours of behind-the-scenes big cat areas and conservation breeding compounds might be completely banned due to the "sufficient barrier" requirement, depriving sanctuaries and zoos alike of supplemental revenue and crucial opportunities to educate potential donors and local enthusiasts on their conservation, research, and outreach efforts.

Loss of exemption for even a single legitimate big cat conservation breeding facility due to an unavoidable violation, such as a determined member of the public breaking into an exhibit to take a selfie with a big cat, might require them to rehome every big cat species they manage. This would place immense stress on the entire conservation breeding network, as these animals are resource-intensive to manage and require highly specialized exhibits and care. The loss of multiple facilities, even spread across several years, would require the placement of rare and exceptionally genetically valuable animals into the sanctuary system, where they would then be permanently removed from the breeding pool due to the requirements of the wildlife sanctuary exemption. As big cat conservation breeding programs within the United States are already grappling with a limited gene pool and a limited number of facilities capable of housing breeding pairs, this type of situation would likely catalyze the collapse of the entire effort.

Similarly, the loss of exemption of a single large wildlife sanctuary housing big cats due to an unavoidable violation, such as a pregnancy resulting from the mating of a vasectomized lion, would orphan their entire collection of animals who have already been forced to endure instability and upheaval. Finding a place for those animals to go puts increased strain on the rest of the already thinly stretched sanctuary network, leaving them under increased financial strain and desperate for donations to cover the cost of caring for the displaced animals. Multiple sanctuaries losing their exemptions would exponentially increase this problem and could result in unsafe, overcrowded situations where welfare deteriorates quickly if large amounts of supplemental funding could not be secured.

Creating even more of an issue than the situation of one type of facility being at risk, as described above, the current wording of H.R. 1380 allows for reasonable interpretations that could result in both major zoos and major sanctuaries losing their exemptions or not being able to come into compliance with the new regulations and, therefore, entire big cat populations being left without a home. These industries have never faced a situation in which there is no room left to house and take care of big cats on that type of scale, so this is uncharted territory. In these situations, both the welfare of the big cats and the safety of the people proximate to them would likely devolve: enforcing the restrictions of H.R. 1380 strictly could easily create the exact type of low-welfare, high-risk situation that the bill attempts to prevent.

H.R. 1380 has the potential to substantially alter not only the welfare of living animals, but the basic functions of conservation breeding programs for critically endangered animals, yet does not make the scope of its impacts foreseeable. It is so broadly written and ambiguous in implementation that it is currently impossible to gauge whether it will truly protect the big cats it aims to help and refrain from having harmful impacts on those housed in responsible, credible facilities. Regardless of legislators' level of support for the captive conservation of big cats, those cats exist, and laws that have the potential to impact them and the facilities holding them must be crafted carefully, thoughtfully, and precisely. H.R. 1380 as written neither meets that duty of care nor fulfills the commitments its proponents have made to the public. The range of possible interpretations of the language in H.R. 1380 is so broad and potentially harmful that it is necessary to insist that the language be clarified before being passed into law.

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