



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

DEC 18 2007

The Honorable Collin C. Peterson
Chairman
Committee on Agriculture
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request of May 4, 2007, for a recommendation on H.R. 1947, a bill "to promote public safety and improve the welfare of captive big cats, and for other purposes."

The Department of Agriculture (USDA) could support enactment of H.R. 1947 if the bill were amended to address several concerns outlined in this letter.

H.R. 1947 would amend the Animal Welfare Act (AWA) to define the terms "big cat" and "direct contact" in the statute; allow the Secretary to deny or revoke a license issued under the AWA if State or local officials with jurisdiction over captive wildlife recommend such action; strengthen the minimum regulatory standards developed to protect public safety; increase monetary penalties for violations of the AWA; and prohibit a dealer or exhibitor regulated by USDA, except for those determined to be zoos, from bringing big cats into direct contact with the public.

These amendments are intended to better protect animals and the public from dangerous situations involving close contact with big cats, such as lions, tigers, cheetahs, cougars and other large captive felines. USDA agrees that such situations are inherently dangerous and believes that H.R. 1947's prohibition on direct contact between the public and big cats and its increase in monetary penalties are appropriate in this regard. We also support the bill's definition of "big cat," as it is consistent with the definition included in the Captive Wildlife Safety Act.

USDA does, however, have several concerns with the bill, which are outlined below.

First, the Office of Legal Counsel of the Department of Justice (DOJ) has raised constitutional concerns involving Commerce Clause issues concerning the scope of the AWA, namely whether activities carried out under the AWA were within interstate commerce or substantially affect interstate commerce. We respond to these concerns first by suggesting amendments to the AWA statement of purposes and definitions. We recommend that the Congressional Statement of Policy in section 1(b) be amended to clarify that a purpose of the AWA is to protect animals from the public, and the public from animals. This amendment should mitigate any doubt about the AWA's jurisdiction over animal and public safety issues. To accomplish this, we recommend that a new paragraph (4) be added to section 1(b). (See appendix #1.)

Dug fax (Dib)
Chandler
Martha (notebooks)

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We also recommend addressing the DOJ's Commerce Clause concerns by amending the definitions of "commerce," "animal," and "big cat" in subsections (c), (g), and (p) (as enacted by H.R. 1947), respectively, in section 2 of the AWA. The amendments would establish a clear jurisdictional nexus between activities carried out under the AWA and interstate commerce. More specifically, these amendments would make explicit that persons, animals, and activities covered by the AWA are either involved in interstate commerce or substantially affect interstate commerce. (See appendix #2, #3, & #4.)

Second, we recommend that the amendments made by section 2(b) to authorize the Secretary to deny or revoke a license based on a recommendation of a third party with proper jurisdiction to conduct an inspection of a person covered by the AWA be expanded to authorize the Secretary to deny or revoke an AWA license based on the recommendation of appropriate Federal officials in addition to "appropriate state or local officials," as currently written. This expansion of authority is consistent with section 15 of the AWA, which directs the Secretary to cooperate with Federal, State and local agencies concerned with animal welfare, and affirms USDA's long-standing practice of working closely with Federal agencies such as the U.S. Department of the Interior in matters pertaining to animal welfare.

Third, we recommend that three technical changes be made to the bill to ensure continuity throughout the AWA. In section 2(d) we recommend that "Increased Fines" be changed to "Increased Penalties," and in section 2(f)(2)(A), we recommend that "grant" be changed to "issue" and that "of such Act" be changed to "of this Act".

Fourth, we recommend that the amendments to section 30(a) of the AWA be modified to clarify that H.R. 1947's prohibition on direct contact between the public and big cats applies to any person operating as a dealer or exhibitor as defined in the AWA. As currently written, section 30(a) prohibits only those dealers and exhibitors who are "licensed by the Secretary under the Act" from allowing direct contact between a big cat and member of the public. In many instances, however, persons engage in activities governed by the Act operate without being licensed by the Secretary of Agriculture to do so. Thus, modifying the section 30(a) amendments to include any person operating as a dealer or exhibitor regardless of whether they hold a license will ensure the broadest possible implementation of the bill's requirements.

Finally, we recommend that the proposed exception for zoos contained in the amendments to section 30(b) of the AWA be stricken. In the course of enforcing the AWA, USDA has found that incidents involving big cats and the public are often idiopathic in nature, and have occurred at facilities that are in good standing with USDA (including those that are accredited by the Association for Zoos and Aquariums) that have taken steps to reduce the risk of harm to the animals and public. For these reasons, among others, USDA has found that big cats are simply too large, strong, quick, and unpredictable to be safely exhibited in close contact with the public under any circumstances. Accordingly, allowing this exception to remain in the bill would be inconsistent with H.R. 1947's stated purpose of promoting public safety and improving the welfare of captive big cats by prohibiting direct contact, and would undermine and limit USDA's current enforcement of the handling regulations as they pertain to big cats by effectively

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authorizing "zoos" to exhibit big cats in close contact with the public despite USDA's findings that such exhibits are inherently dangerous.

The provisions of this bill should not require additional resources to administer or significantly impact the workload of APHIS inspectors and staff.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Thank you for the opportunity to provide USDA's comments on the bill. For the Committee's convenience, an appendix outlining USDA's recommended amendments to H.R. 1947 is attached. We look forward to working with the Committee to address our concerns.

Sincerely,



Charles F. Conner
Acting Secretary

APPENDIX

1. Amend section 1(b) of the AWA by striking "and" at the end of paragraph (2), striking the period and inserting "; and" at the end of paragraph (3), and inserting "(4) to protect the public from animals, and to protect animals from the public".
2. Amend section 2(c)(2) of the AWA by striking "affects" and inserting "substantially affects".
3. Amend section 2(g) of the AWA by inserting "being transported or otherwise involved in commerce" after "warmblooded animal".
4. Amend section 2(p) (as enacted by H.R. 1947) of the AWA by inserting "being transported or otherwise involved in commerce" after "hybrid of such species".