

PETITION

Before the Fish and Wildlife Service
United States Department of the Interior

March 16, 2010

To Upgrade Captive Chimpanzees (*Pan troglodytes*) from Threatened to
Endangered Status Pursuant to the Endangered Species Act of 1973, as Amended



Pan troglodytes (Photograph by National Geographic)

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TABLE OF CONTENTS

I.	Introduction.....	4
II.	Legal Background.....	7
	A. Endangered Species Act Background.....	7
	B. The Listing History of the Chimpanzee.....	15
III.	Argument: Depriving Captive Chimpanzees of Full Protection Under the ESA is Antithetical to Conserving the Species.....	20
	A. The “Split-Listing” Scheme for <i>Pan troglodytes</i> has Contributed to a Proliferation of Privately Owned and Exploited Chimpanzees, Interfering With Conservation of the Species in the Wild.....	27
	1. Chimpanzees in Entertainment.....	29
	a. Chimpanzees Are Widely Exploited for Entertainment in the U.S.....	29
	b. Because Chimpanzees Are So Pervasively Used in Entertainment the Public Believes the Species is Prevalent in the Wild.....	69
	c. Chimpanzees Used in Entertainment Are Abused and Mistreated.....	71
	2. Chimpanzees Used as Pets.....	77
	3. Chimpanzees in Biomedical Research Laboratories.....	87
	B. Threats to Wild Chimpanzee Populations Have Only Increased Since the “Split-Listing” of the Species.....	94
	1. Population Numbers.....	94
	2. Habitat Loss.....	99
	3. Disease.....	105
	4. Overutilization of Wild Chimpanzees for Commercial and Recreational Purposes.....	106
	a. Poaching for Bushmeat.....	106
	b. Poaching as Retribution for Crop Raiding.....	110

c. Illegal Trafficking of Live Chimpanzees.....	111
5. Inadequate Regulatory Mechanisms Including the “Split-Listing” Adversely Impact Chimpanzee Conservation.....	115
IV. Conclusion.....	125
V. Scientific Literature Cited.....	131

I. Introduction

The Humane Society of the United States (HSUS), the American Association of Zoological Parks and Aquariums (AZA), the Jane Goodall Institute (JGI), the Wildlife Conservation Society (WCS), the Pan African Sanctuary Alliance (PASA), the Fund for Animals (FFA), Humane Society International (HSI), and the New England Anti-Vivisection Society (NEAVS), collectively “co-petitioners,” hereby petition the U.S. Fish and Wildlife Service (FWS or “the Service”) pursuant to Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531 *et seq.*, hereinafter ESA or “the Act”), to reclassify captive chimpanzees (*Pan troglodytes*) from their present status as a “threatened” species to an “endangered” species. For the reasons stated herein, the Service must take this action to ensure that all individuals of the species *Pan troglodytes*, whether living in the wild or in captivity, are protected, to provide for conservation of the species as required under the Endangered Species Act.

This petition is submitted pursuant to Section 4(b)(3) of the ESA, which states:

To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information¹ indicating that the petitioned action may be warranted.

¹ The Fish and Wildlife Service has determined that “‘substantial information’ is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” (50 C.F.R. § 424.14(b)(1)). FWS regulations further provide that in making this finding “the Secretary shall consider whether the petition—(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) Provides information regarding the status of the species over all or a significant portion of its range; and (iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.” (50 C.F.R. § 424.14 (b)(2)).

The Secretary must make such listing determinations “solely on the basis of the best scientific and commercial data available to him.” (16 U.S.C. § 1533(b)(1)(A)). “The addition of the word ‘solely’ is intended to remove from the process of listing or delisting of species any factor not related to the biological status of the species. . . . [E]conomic considerations have no relevance to determinations regarding the status of species.” (*New Mexico Cattle Growers v. U.S. Fish & Wildlife*, 248 F.3d 1277, 1284-85 (10th Cir. 2001), quoting H.R. Rep. No. 97-567, pt. 1 at 29 (1982) (emphasis added); see also H.R. Conf. Rep. No. 835, 97th Cong. 2d Sess. 19-20 (1982) (the limitations on the factors the Service may consider in making listing decisions were intended to “ensure that decisions . . . pertaining to listing . . . are based solely upon biological criteria and to prevent nonbiological considerations from affecting such decisions.”) (emphasis added); S. Rep. No. 418, 97th Cong., 2d Sess. 12 (1982) (explaining that this language “would preclude the Secretary from considering economic or other non-biological factors in determining whether a species should be listed . . . Only in this way will the endangered and threatened species lists accurately reflect those species that are or are likely to be in danger of extinction.”) (emphasis added)).

Included herein is overwhelming scientific and commercial evidence that the current “threatened” status of captive chimpanzees has led to pervasive exploitation of this species that is contrary to international and domestic conservation efforts to save the species from extinction. The existing regulatory scheme provides that the “take” prohibition of the ESA does not apply to captive chimpanzees residing in the U.S.; as a result, the species continues to be used for commercial purposes, including being subjected to abusive training for entertainment purposes and invasive biomedical research. Further, since interstate commerce in this species remains legal, private owners can and do buy and sell infant chimpanzees, who are forcibly and prematurely separated from their mothers, for profit.

Such sanctioned exploitation is all too common in the U.S., and it has become clear in recent decades that the use of these captive chimpanzees negatively impacts wild populations of the species. Depriving captive chimpanzees of protection in the U.S. contributes to the further endangerment of wild populations by fueling demand for poaching and trafficking, as unrestricted trade in captive chimpanzees promotes a lucrative international market for wild chimpanzees. In addition, domestic exploitation of the species undermines international conservation efforts by causing western conservationists to lose political capital with African citizens and decision-makers. Commercial exploitation also misleads the public into believing that chimpanzees are well protected in the wild, thereby

reinforcing negative conservation attitudes and inhibiting efforts to raise awareness of the species' plight. Thus, to provide for chimpanzee conservation, as required by the ESA, captive *Pan troglodytes* must be listed as "endangered." It is time that the Service takes action to fully protect all individuals of this imperiled species.

Description of Co-Petitioners

The Humane Society of the United States, founded in 1954, is a non-profit organization dedicated to reducing suffering and creating meaningful social change for animals by advocating for sensible public policies, working to enforce existing laws, and educating the public about animal issues. With over 11 million members, HSUS is the nation's largest animal protection organization. Through its "Chimps Deserve Better" campaign, HSUS strives to eliminate commercial exploitation of chimpanzees.

The American Association of Zoological Parks and Aquariums (doing business as the Association of Zoos and Aquariums), founded in 1924, is a non-profit organization dedicated to the advancement of accredited zoos and aquariums. AZA is America's leading accrediting organization for zoos and aquariums and accredits only those institutions that have achieved specified standards for animal care, education, wildlife conservation, and science. Thirty-five of AZA's over 200 member institutions currently house chimpanzees for conservation purposes, including captive breeding carefully managed to maintain genetic integrity pursuant to the Chimpanzee Species Survival Plan (SSP).

The Jane Goodall Institute is a global non-profit organization founded by the world's leading expert on chimpanzees, Dr. Jane Goodall, and since 1977 has sought to improve global understanding and treatment of great apes, and contribute to preservation of great apes and their habitats. JGI focuses on combining conservation with education and promotion of sustainable livelihoods in local communities, and creating a worldwide network of people who care deeply for their communities and all animals and the environment.

The Wildlife Conservation Society, founded in 1895, is dedicated to saving wildlife and wild places around the globe and manages about 500 conservation projects in more than 60 countries, including five institutions in New York City dedicated to conservation education. WCS recently facilitated an agreement to protect essential chimpanzee habitat in eastern Africa and monitors chimpanzee populations in the Congo Basin.

The Pan African Sanctuary Alliance, founded in 2000, is a non-profit organization that represents more than a dozen sanctuaries in Africa that house over 700 chimpanzees confiscated from or abandoned by poachers, traffickers, and private owners. PASA sanctuaries are committed to providing the best possible facilities and care to captive primates, while working towards the protection and conservation of the species in the wild, including reintroduction of rehabilitated chimpanzees where possible.

The New England Anti-Vivisection Society was founded in 1895 to end the cruelty and waste of animal experiments and replace them with modern alternatives that are ethically, humanely, and scientifically superior. In 2006, NEAVS began Project R & R: Release and Restitution for Chimpanzees in U.S. Laboratories, with the goal of ending the use of chimpanzees in biomedical research and testing, and to help provide them release and restitution in permanent sanctuary.

The Fund for Animals, founded in 1967, is a national non-profit organization that advocates for preserving wild populations of animals and preventing abuse of captive wildlife. In addition, the Fund operates the Cleveland Amory Black Beauty Ranch, an animal care facility that provides sanctuary to several chimpanzees rescued from a life of commercial exploitation in the United States.

Humane Society International (HSI) is an animal protection organization that oversees the advocacy work of The Humane Society of the United States in international arenas. HSI works in Africa to help raise public awareness of the plight of wild chimpanzees, and to increase capacity for local enforcement of laws to protect the species.

II. Legal Background

A. Endangered Species Act Background

The United States has long recognized the need to protect wildlife, and, toward this end, has enacted multiple laws to prohibit human actions that contribute to species extinction. With the promulgation of the Lacey Act in 1900 (16 U.S.C. §§ 3371 *et seq.*), it became a federal offense to engage in commerce of protected species. In 1940, the U.S. signed the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere “to protect and preserve [species] in their natural habitat . . . in sufficient numbers and over areas extensive enough to assure them from becoming extinct through any agency within man’s control.” (56 Stat. 1534, T.S. No. 981, U.N.T.S. No. 193). These laws recognized that

extinction knows no political boundaries, and that both national action and international cooperation are essential to effectively protect endangered species.

In 1966, Congress enacted the Endangered Species Preservation Act (Public Law No. 89-669), which created “a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.” Because this statute extended protection only to native species, Congress found that it did not adequately protect foreign species that suffered from overexploitation, often because of the demands of the American marketplace. Therefore, in 1969, Congress enacted the Endangered Species Conservation Act (Public Law No. 91-135), which authorized the Secretary of the Interior to promulgate a list of species, native or non-native, that were “threatened with worldwide extinction.” This Act also called for an “international ministerial meeting” to create a “binding international convention on the conservation of endangered species,” ultimately leading to the passage of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 U.S.T. 1087, hereinafter CITES). Thus, forty years ago the U.S. led the way to ensure that all countries act to save species from both local and global threats.

Recognizing that prior laws did not sufficiently protect endangered species, in 1973 Congress passed the Endangered Species Act. The purpose of the ESA is “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions” to which the United States is committed. “It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” (16 U.S.C. §§ 1531(b), (c) (emphasis added)). Thus, as the Supreme Court has declared, the goal of the ESA is to “reverse the trend toward extinction, whatever the cost.” (TVA v. Hill, 437 U.S. 153, 184 (1978)).

The ESA defines the term “conserve” to mean “to use all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.” Such measures may even include a “regulated taking” of the species, but only in the “extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.” (Id.; 16 U.S.C. § 1532(3)). The Act uses several mechanisms to achieve these extremely important goals, and the

Secretary of the Interior has delegated responsibility for implementing them to the Fish and Wildlife Service for terrestrial species, and to the National Marine Fisheries Services for marine species. (50 C.F.R. Part 17). Pursuant to Section 4 of the Act, the Service must "list" species as either "endangered" or "threatened," depending on the extent of the threats to their existence. (16 U.S.C. § 1533). The term "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." (16 U.S.C. § 1532(16)). The Service has adopted a policy that defines the term "distinct population segment," under which the agency must conclude that a particular population of a species is both "distinct" and "significant" before it can be determined to be a separate listable entity. (See 61 Fed. Reg. 4722 (February 7, 1996)).

An "endangered" species is one that the Service has determined is already "in danger of extinction throughout all or a significant portion of its range." (16 U.S.C. § 1532(6)). A "threatened" species is one that "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." (16 U.S.C. § 1532(20)). The Act requires the Service to list a species as either "endangered" or "threatened" based on the following five factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) "other natural or manmade factors affecting its continued existence." (Id. at § 1533(a)(1)(A-E); see Section III(B)). The Service is required to list a species if any one of these criteria is present. (Southwest Center for Biological Diversity v. Babbitt, 215 F.3d 58, 60 (D.C. Cir. 2000)). These definitions and criteria underscore the purpose of the Act, to ensure that species thrive in their natural habitats.

The Service is also required to base listing decisions "solely" on the "best available scientific and commercial data available." (16 U.S.C. § 1533(b)(1)(A)). In imposing this requirement, Congress expressly intended to "ensure that decisions . . . pertaining to listing . . . are based solely upon biological criteria and to prevent nonbiological considerations from affecting such decisions." (H.R. Conf. Rep. No. 835, 97th Cong. 2d Sess. 19-20 (1982) (emphasis added)). Thus, Congress made it clear that "economic considerations have no relevance to determinations regarding the status of species." (Id. (emphasis added); see also S. Rep. No. 418, 97th Cong., 2d Sess. 12 (1982) ("This amendment would preclude the Secretary from considering economic or other non-biological factors in determining whether a species should be

listed . . . Only in this way will the endangered and threatened species lists accurately reflect those species that are or are likely to be in danger of extinction" (emphasis added)). Therefore, as the Supreme Court observed in TVA v. Hill "the language, history, and structure of the [ESA] . . . indicates beyond doubt that Congress intended endangered species to be afforded the highest priorities." (437 U.S. at 174 (emphasis added)).

Moreover, in keeping with the overall purposes of the statute, even where the best available scientific evidence leaves some doubt as to the status of a species, the Service is required to "give the benefit of the doubt" to the species. (Conner v. Burford, 848 F.2d 1441, 1454 (9th Cir. 1988); see also San Luis & Delta-Mendoza Water Auth., 2000 U.S. Dist. LEXIS 1779 at *9 (E.D. Cal. 2000)). Indeed, "[e]ven if the available scientific and commercial data were quite inconclusive [the Service] may – indeed must – still rely on it in making listing decisions." (Southwest Center for Biological Diversity v. Babbitt, 215 F.3d at 60, quoting City of Las Vegas v. Lujan, 891 F.2d 927, 938 (D.C. Cir. 1989)).

Once a species is listed, it is entitled to various protections under the Act and the agency's implementing regulations, depending on whether it is listed as "endangered" or "threatened." Under Section 9 of the statute, 16 U.S.C. § 1538(a) it is unlawful to "import any [endangered] species into, or export any such species from the United States;" to "deliver, receive, carry, transport, or ship in interstate or foreign commerce . . . in the course of a commercial activity, any such species;" and to "sell or offer for sale in interstate or foreign commerce any such species." (16 U.S.C. §§ 1538(a)(1)(A),(E)). It is also unlawful to "take" a member of an endangered species within the United States or on the high seas, 16 U.S.C. § 1538(a)(1)(B)-(C) – a term that includes "harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect." (16 U.S.C. § 1532(19)). The FWS has further defined the term "harass" to mean "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering." (50 C.F.R. § 17.3). Under Section 9, it is also unlawful to "possess, sell, deliver, carry, transport, or ship" any endangered species that was unlawfully "taken." (16 U.S.C. § 1538(a)(1)(D)).²

² The "grandfather clause" of Section 9 provides an exemption from certain specified prohibitions – but not the "take" prohibition – for "any fish or wildlife which was held in captivity or in a controlled environment" on the date the species was listed. 16 U.S.C. § 1538(b); see also ASPCA v. Ringling Bros. and Barnum & Bailey Circus, 502 F.Supp.2d 103 (2007) (holding that Congress intended the take prohibition to apply to "pre-act" wildlife). However, the statute further provides that this

Section 10 of the ESA gives the FWS limited authority to issue permits to allow activities that are otherwise strictly prohibited by Section 9 with respect to “endangered” species where such actions are “incidental” to otherwise lawful activity – *i.e.*, the take of the species was not intended. (16 U.S.C. § 1539(a)(1)(B)). To obtain such an “incidental take” permit, an entity must demonstrate that the taking is not the purpose of the activity, and it must also prepare a “habitat conservation plan” for the species to compensate for the “take.” (See 16 U.S.C. § 1539(a)(2)(B)).

Section 10 also provides the FWS authority to issue permits for otherwise unlawful activities "for scientific purposes or to enhance the propagation or survival of the affected species" (16 U.S.C. § 1539(a)(1)(A)). This limited exception allows what would normally be a "taking" or other prohibited act, where such activity is required to benefit the species in the wild – *e.g.*, establishing a captive breeding program, such as the AZA SSP, with healthy individuals carefully managed to maintain genetic integrity. (See, *e.g.*, H. Rep. No. 412, 93d Cong., 1st Sess. 17 (July 27, 1973), reprinted in "A Legislative History of the Endangered Species Act of 1973," 97th Cong., 2d Sess. (February 1982) at 156 ("Any such activities to encourage propagation or survival may take place in captivity . . . so long as this is found to provide the most practicable and realistic opportunity to encourage the development of the species concerned.")).

The statute further provides that the FWS "shall publish notice in the Federal Register of each application for an exemption or permit," that each such notice "shall invite the submission from interested parties . . . of written data, views, or arguments with respect to the application," and that "[i]nformation received by the [FWS] as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding." (16 U.S.C. § 1539(c)). The FWS may "only" grant a permit if it finds "and publishes in the Federal Register" that the permit (1) "was applied for in good faith," (2) if granted and exercised "will not operate to the disadvantage of such endangered species," and (3) will be "consistent with the purposes and policy" of the Act – *i.e.*, to “conserve” endangered and threatened species. (16 U.S.C. § 1539(d)). These procedures are mandatory. (See Gerber v. Norton, 293 F.3d 173, 179-82 (D.C. Cir. 2002)).

limited exception applies only if "such holding and any subsequent holding or use" of the wildlife "was not in the course of a commercial activity." 16 U.S.C. § 1538(b) (emphasis added). The term "commercial activity" is defined by the Act to mean "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." 16 U.S.C. § 1532(2) (emphasis added).

Whenever a species is listed as “threatened,” the FWS “shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of such species.” (16 U.S.C. § 1533(d) (emphasis added)). The FWS has issued regulations that provide that all of the prohibitions that apply to endangered species also apply to threatened species, unless the agency (a) otherwise permits those activities pursuant to its general regulations governing permits for threatened species, 50 C.F.R. § 17.32, or (b) has issued a “special rule” that governs a particular “threatened” species, 50 C.F.R. § 17.31(c). However, pursuant to the plain language of the Act, any such “special rule” must also “provide for the conservation” of the species – *i.e.*, provide for its recovery in the wild. (16 U.S.C. § 1533(d); see also Sierra Club v. Clark, 577 F. Supp. 783 (D.Minn. 1984), aff’d, 755 F.2d 608 (8th Cir. 1985); accord, Fund for Animals v. Turner, 1991 WL 206232 (D.D.C. 1991)).

The plain language of the Act also makes clear that the statute is applicable to both listed animals living in the wild, and those held in captivity, as the FWS itself has long recognized. (See 44 Fed. Reg. 30044, May 23, 1979, “The Service has consistently maintained that the Act applies to both wild and captive populations of a species.”). Thus, “since 1976, the Service has been striving to achieve an appropriate degree of control over prohibited activities involving living wildlife of non-native species born in captivity in the United States.” (63 Fed. Reg. 48636, September 11, 1998). While some captive propagation efforts, including the AZA SSP, can benefit wild populations, the Service has recognized that “uses of captive wildlife can be detrimental to wild populations” and that the agency’s goal in regulating captive use of species should be to “strike the most favorable balance for conservation of the wildlife.” (44 Fed. Reg. at 30045 (emphasis added)).

To ensure that captive populations of listed species are managed for conservation purposes (*i.e.*, to help protect wild populations), in 1979, the FWS issued “captive-bred wildlife” (CBW) regulations that granted general permission to any person to engage in activities otherwise prohibited by Section 9 with respect to non-native endangered or threatened animals that are born in captivity, but – in furtherance of the agency’s duty to use its authority to “conserve” endangered and threatened species – only if “[t]he purpose of such activity is to enhance the propagation or survival of the affected species.” (44 Fed. Reg. 54002, 54007 (September 17, 1979); 50 C.F.R. § 17.21(g) (emphasis added)). Thus, the agency explained that it believes that “a wide range of activities involved in maintenance and propagation of captive wildlife should readily be permitted when wild populations are sufficiently protected from unauthorized taking, and when it can be shown that such activities would not be detrimental to the survival of the wild or

captive populations of the species." (44 Fed. Reg. at 54002 (emphasis added); 50 C.F.R. § 17.3). Those activities include "normal practices of animal husbandry needed to maintain captive populations that are self-sustaining and that possess as much genetic vitality as possible." (*Id.*). Accordingly, under the CBW regulations, entities engaged in these legitimate conservation efforts may avail themselves of this general permit by "registering" with the agency, maintaining records about their activities, and providing annual reports to the FWS. (*Id.*).

On December 27, 1993, the FWS further amended the definition of "enhance the propagation or survival" to eliminate "education through exhibition" as a sole justification for using the CBW registration, to make it clear that the CBW program is available "only [to] those persons who engage in beneficial captive breeding." (58 Fed. Reg. 68323, 68325 (December 27, 1993) (emphasis added)). In doing so, the FWS explained its concern that, under the CBW registration system, "captive-bred animals . . . might be used for purposes that do not contribute to conservation, such as for pets, research that does not benefit the species, or for entertainment." (57 Fed. Reg. 548, 550 (January 7, 1992) (emphasis added)).

In 1998, the FWS also amended its definition of "harass" as applied to captive wildlife to exclude "generally accepted animal husbandry practices, breeding procedures, and provisions of veterinary care that are not likely to result in injury to the animal." (63 Fed. Reg. 48634 (September 11, 1998); 50 C.F.R. § 17.3). In the preamble to that rule, the FWS explained that, although several commenters had suggested that the agency should amend the definition of "take" to apply only to animals in the wild, the agency could not do so because the statute defined "take" to apply to all listed wildlife "whether wild or captive." (63 Fed. Reg. at 48636 (emphasis added)). Thus, the agency explained that, although the statutory definition could be "clarif[ied]" by the FWS as it applies to captive wildlife, "the statutory term cannot be changed administratively." (*Id.* (emphasis added)).

The FWS further explained that the only purpose of the amendment to the definition of "harass" was to "exclude proper animal husbandry practices that are not likely to result in injury from the prohibition against 'take.'" (*Id.*). Therefore, according to the agency, "[s]ince captive animals can be subjected to improper husbandry as well as to harm and other taking activities, the Service considers it prudent to maintain such protections, consistent with Congressional intent." (*Id.* (emphasis added)). The agency further found that "maintaining animals in inadequate, unsafe or unsanitary conditions, physical mistreatment, and the like constitute harassment because such conditions might create the likelihood of injury

or sickness," and that "[t]he Act continues to afford protection to listed species that are not being treated in a humane manner." (*Id.* at 48638 (emphasis added)).

The Act also requires FWS to “encourage . . . foreign countries to provide for the conservation” of listed species and implements the United States’ international obligations with regard to worldwide endangered and threatened species. (16 U.S.C. § 1537). For example, CITES was drafted by representatives of countries participating in the International Union for the Conservation of Nature – including the United States – to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES was first implemented on July 1, 1975, and today there are 175 countries that are party to the agreement.³

CITES classifies species in Appendices with varying levels of protection – those included on Appendix I are “species threatened with extinction.” International commercial trade in these species is prohibited unless the Scientific Authority for the state of export has advised that the export will “not be detrimental to the survival of the species,” and the Management Authority for that country is satisfied that (a) the wildlife “was not obtained in contravention of the laws of the State for the protection of fauna and flora;” (b) “any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment;” and (c) an “import permit has been granted” for the wildlife. (See CITES Article III). An import permit may only be granted when the Scientific Authority for the state of import has advised that the import of the wildlife “will be for purposes which are not detrimental to the survival of the species,” and that the “recipient of a living specimen is suitably equipped to house and care” for the wildlife, and the Management Authority for the state of import is satisfied that the specimen is “not to be used for primarily commercial purposes.” (*Id.* (emphasis added)).⁴

³ By comparison, there are 192 member countries of the United Nations – thus, CITES enjoys an extremely high participation rate for an international convention.

⁴ Pursuant to Article VII of the Convention, trade in Appendix I animals that were bred in captivity in a facility registered with the CITES Secretariat is treated the same as trade in Appendix II species (*i.e.*, a “species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival;” and “other species which must be subject to regulation in order that trade in specimens of certain species . . . may be brought under effective control”). Article II(2) (the latter provision protects species that are similar in appearance to those that are facing extinction, since trade in the similar species can fuel trade in the more vulnerable species). Trade in Appendix II species does not require an import permit, but does require an export permit issued after a finding that the export will not be detrimental to the survival of the species. Compare Article III *with* Article IV.

B. The Listing History of the Chimpanzee

On October 19, 1976, the FWS listed the chimpanzee, *Pan troglodytes*, as “threatened” under the Act. (41 Fed. Reg. 45990). The agency based its decision on a decline in the population caused by several of the statutory criteria for listing. First, applying the “present or threatened destruction, modification, or curtailment” of habitat or range factor, the Service found that “vast stretches of suitable habitat” for the chimpanzee had been destroyed for commercial logging. (41 Fed. Reg. at 45993). Second, applying the “overutilization for commercial, recreational, scientific, or educational purposes” factor, the agency further attributed the chimpanzees’ population decline to the fact that “[c]himpanzees are captured and exported for use in research labs and zoos” throughout the world, and noted that the United States “is the chief importer of the chimpanzee.” (*Id.*). Finally, applying the “inadequacy of existing regulatory mechanisms” factor, the agency noted that, although chimpanzees are protected by laws in some countries, “such laws have proven difficult to enforce,” and “[l]arge scale exportation continues and habitat destruction is unchecked by legal restraint.” (*Id.*).

On the same day, pursuant to Section 4(d) of the Act, the Service issued a “special rule” for the chimpanzee providing that all of the Section 9 prohibitions that apply to “endangered” species under the Act would also apply to the “threatened” chimpanzee. However, the “special rule” further provided that these prohibitions would not apply in the case of live chimpanzees held in captivity in the United States on the effective date of the rulemaking or to the progeny of such chimpanzees or to the progeny of chimpanzees legally imported into the United States after the effective date of the rulemaking. (*Id.*). No explanation was given by the FWS for the disparate treatment of captive individuals.⁵

Unfortunately, even after FWS listed chimpanzees as “threatened” and granted protections to the wild populations, the species’ population continued to dramatically decline. Thus, on November 4, 1987, the Jane Goodall Institute, The Humane Society of the United States, and the World Wildlife Fund submitted a petition to the FWS to reclassify *Pan troglodytes* from “threatened” to “endangered.” (See 54 Fed. Reg. 8152 (Feb. 24, 1989)). The petition was based on scientific evidence that the chimpanzee had declined drastically because of massive habitat

⁵ Although CITES entered into force in the U.S. in 1975, prior to the ESA listing of the chimpanzee, the species was not included in Appendix I of that treaty until February, 1977. Therefore, when the FWS listed the chimpanzee as threatened in 1976, it remained legal under international law to trade wild chimpanzees for commercial purposes; additionally, FWS had not yet established final regulations for captive bred wildlife. Thus, the 1976 listing may have been an effort to end U.S. trade in wild chimpanzees while allowing for unfettered captive use of the species.

destruction, population fragmentation, excessive local hunting, and international trade. On March 23, 1988, the Service published a finding that the petitioners had presented substantial information indicating that the petition “may be warranted,” and, pursuant to the ESA, 16 U.S.C. § 4(b)(3)(A), the Service commenced a “status review” of the species. (See 53 Fed. Reg. 9460 (March 23, 1988)). Public comments on this finding were overwhelmingly in support of reclassifying chimpanzees to “endangered” – “the Service received 40 comments from major authorities and organizations, and from governments in nations with wild chimpanzee populations, all of which agreed with the petition and/or provided additional information lending support . . . In addition, during the review period, 54,212 supporting letters and postcards were received from the public [in support of listing chimpanzees as “endangered”] . . . The Service received six comments opposing reclassification during the review period . . . None of these [six] comments provided information about the status of chimpanzees in the wild,” but instead focused on captive use of the species. (54 Fed. Reg. 8152).

On December 28, 1988, the Service issued a 12-month finding on the petition: the Service noted that “the petition and subsequent supporting comments dealt primarily with status in the wild and not with viability of captive populations” and found that “the requested action is warranted with respect to chimpanzees in the wild.” (53 Fed. Reg. 52452). On February 24, 1989, the FWS published a proposed rule to reclassify wild chimpanzees as “endangered,” but to maintain the “threatened” status for captive chimpanzees. (54 Fed. Reg. 8152). The Service asserted that “to the extent that self-sustaining breeding groups of captive *P. troglodytes* provide surplus animals for research and other purposes, there is a reduced probability that other individuals of that species will be removed from the wild.” (54 Fed. Reg. at 8153).

During the public comment period on the proposed rule, 27 major authorities and organizations concerned with research and conservation of chimpanzees submitted comments: none opposed reclassification of wild populations of chimpanzees to “endangered,” but eight recommended that captive chimpanzee populations also be reclassified from “threatened” to “endangered.” (55 Fed. Reg. 9129, 9131 (March 12, 1990)). In particular, a coalition led by the Animal Legal Defense Fund argued that “the prior [1976] decision of the Service to split the populations of *Pan troglodytes* for the purpose of increased protection has resulted, not in a benefit to the species, but rather in a further decline leading to the need to upgrade *Pan troglodytes* from threatened to endangered.” (Comments April 25, 1989 at 2). That coalition also noted that “the Service may not rely on the medical

industry's research and breeding program as justification to split the species." (Id. at pg 5). The AZA commented that it did "not believe there should be separate treatment for the captive population of chimpanzees." (Comments April 25, 1989).

Despite this opposition to the scientifically unjustifiable split-listing of the species, a final rule to this effect was issued on March 12, 1990. (55 Fed. Reg. 9129). At the same time, the agency revised its "special rule" on chimpanzees to make it clear that, while all of the protections of the ESA would apply to the "endangered" wild chimpanzees, none of them would apply to the "threatened" chimpanzees held in captivity in the U.S. (Id.; 50 C.F.R. § 17.40(c)).

The Service explained that, despite the fact that, for more than twelve years, trade in wild chimpanzees had been prohibited under both the ESA and Appendix I of CITES (and despite the fact that the lower protections for captive chimpanzees were ostensibly designed to protect wild populations), "[w]ithin the last decade there have been increasing indications that the status of wild chimpanzees is deteriorating and that most populations are continuing to decline." (Id.). Thus, the Service explained that, due principally to habitat destruction and hunting, the species had become significantly endangered across its historic range of 25 African countries. Chimpanzees had been entirely extirpated from five countries, and their numbers had been reduced to fewer than 1,000 individuals in ten countries, to fewer than 5,000 in six, to fewer than 10,000 in two, and were continuing to decline in the remaining two countries, Gabon and the Democratic Republic of the Congo (formerly Zaire). (55 Fed. Reg. at 9133).

The Service also found that, in addition to habitat destruction, the "overutilization" of chimpanzees for "commercial, recreational, and scientific purposes" was continuing to contribute to the species' decline. (Id.). The agency noted that "[c]himpanzees are extensively sought by people, both alive for use in research, entertainment, and exhibitions, and dead, for local use as food and in religious rituals," and that "[s]uch utilization is contributing substantially to the decline of the species." (Id. (emphasis added)). The Service further explained that, while "the United States was once the chief importer of chimpanzees," there had been "no major legal activity" of this kind for about a decade. (Id. (emphasis added)). The agency also stated – in a tacit admission that the *illegal* importation of chimpanzees was still a problem – "[c]ommercial trade has continued elsewhere." (Id.).

The agency described the "alarming recent trend towards killing adult females both for local use as meat and in order to secure their live offspring for

export,” and stressed that, “because entire family groups may have to be eliminated in order to secure one live infant, and since many of these infants perish during the process, it has been estimated that five to ten chimpanzees die for every one that is delivered alive to an overseas buyer.” (Id. (emphasis added)). Thus, the agency explained, “[m]any thousands of wild chimpanzees have been lost in this manner during the last several decades, with a resulting extermination or great reduction of several major populations, particularly in western Africa.” (Id.). Despite the fact that wild chimpanzees had been protected under both the ESA and Appendix I since 1977, the FWS stated that “[t]here remains a substantial commercial demand for chimpanzees, especially for biomedical research . . .” (Id. (emphasis added)).

The FWS also relied on the “other natural or manmade factor” criterion of Section 4 of the ESA, in finding that the naturally slow reproductive rate of chimpanzees – very few adult females raise more than two young to maturity during their approximate 27 years of reproductive life – “combined with human pressures,” places the chimpanzee “in a precarious survival position.” (Id. at 9134). Indeed, the Service quoted Dr. Jane Goodall’s ominous prediction that “the continued removal of infants from wild populations (even if this does not involve the killing of breeding females) will, within a relatively short period of time, bring wild chimpanzees to the verge of extinction.” (Id. (emphasis added)). Again citing Dr. Goodall, the Service further observed that problems of habitat destruction and the loss of genetic viability “are unfortunately becoming prevalent throughout the range of the chimpanzee,” that “[s]mall, isolated groups of chimpanzees are more easily eliminated by human hunting, disease, or any local environmental disruption,” and that “[f]ragmentation and associated disturbance may also have adverse long-term effects relating to social structure and reproduction.” (Id.).

As to the “inadequacy of existing regulatory mechanisms” factor of the listing criteria, the FWS observed that, although chimpanzees were protected under CITES, as well as “domestic legislation in various non-African countries, including the United States,” which “forbids importation of chimpanzees,” and although many of the African nations also have protective laws, “[n]onetheless, chimpanzees continue to be exported, imported, and captured and killed illegally for various uses.” (Id. at 9134 (emphasis added)). The agency further found that there were problems on an international scale “both because not all involved countries are parties to the Convention [CITES], and because the controls of the Convention are sometimes surreptitiously bypassed.” (Id.). Indeed, the FWS found that “[t]here have been cases of chimpanzees being illegally captured in and exported from

countries in Africa, and then brought into nations that are parties to the Convention.” (Id.).

The agency concluded that reclassification to “endangered” status for the chimpanzee in the wild was “based on an assessment of the best available scientific information, and of past, present, and probably future threats” to the species. (Id.). Indeed, the FWS concluded that the chimpanzee’s “status continues to deteriorate through habitat destruction, expansion of human activity, hunting, commercial exploitation, and other problems.” (Id. (emphasis added)).

As to captive chimpanzees, the agency decided to maintain the “threatened” status with none of the protections of the ESA granted to those individuals in the U.S., on the grounds that the chimpanzee “is considered to be of much importance in biomedical and other kinds of research, and is also held in captivity for use by zoos, as pets, and in entertainment.” (55 Fed. Reg. at 9130 (emphasis added)). In response to comments that “[p]lacing captives in a category of lesser concern might actually stimulate continued commerce and thereby create conditions contrary to the intent of the Endangered Species Act,” the Service stated that it “believes” that “[t]o the extent that self-sustaining breeding groups of captive [chimpanzees] provide surplus animals for research and other purposes, there may be reduced probability that other individuals of that species will be removed from the wild.” (Id. (emphasis added)). Although the agency admitted that “[t]his line of reasoning has been questioned,” it nevertheless speculated that “severe restrictions on the use of captive animals in the United States might discourage propagation efforts and lead to a decline in the population here, and possibly contribute to a greater demand for wild-caught animals elsewhere.” (Id. (emphasis added)).

The FWS dismissed the observation that “the previous split treatment” – *i.e.*, under which the entire species was listed as “threatened,” but the “special rule” provided protections only for the wild populations – did not in any way improve the status of the wild population, on the grounds that “there is no evidence that the different treatment of these populations was in any way responsible for the population decline.” (Id.). However, the agency did not provide any basis for believing that the difference in treatment in any way helped limit the decline of wild chimpanzees.

Thus, as of 1990, chimpanzees are “split-listed” under the Endangered Species Act, with individuals in the wild designated as “endangered” and receiving full protection under the Act, and captive individuals listed as “threatened” and those within the U.S. receiving no protection under the Act. As discussed in the

next section, this split-listing scheme is contrary to the conservation purpose of the ESA, as the unjustifiable regulatory approach has continued to contribute to the endangerment of this species in the wild.

III. Argument: Depriving Captive Chimpanzees of Full Protection Under the ESA Is Antithetical to Conserving the Species.

Carving out an administrative exemption for the captive members of *Pan troglodytes* is completely antithetical to the overall purposes of the ESA, *i.e.*, to “conserve” species. As discussed extensively below, the lack of regulation of captive chimpanzees in the U.S. negatively impacts wild populations of the species by fueling poaching and trafficking and undermining conservation efforts. (See Section III(B), below). Further, this sweeping exemption for captive chimpanzees has interfered with the “preservation” of the “gene pools” of this species, 42 Fed. Reg. 28052, by permitting diffuse private ownership of chimpanzees and facilitating unregulated and improperly managed breeding of captive chimpanzees. (See Section III(A), below).

Domestic Exploitation Harms Wild Populations

As some of the world’s leading experts on chimpanzees explain, the lack of protection for captive chimpanzees in this country contributes to the further decline of the species in the wild in several ways – *i.e.*, by fueling demand for young chimpanzees who are captured and traded on the black market; by making it difficult to advocate for conservation measures in the range countries; by misrepresenting the biological and behavioral needs of these species; and by misleading the public to believe that chimpanzees are well protected in the wild.

It is now clear that allowing the wholesale commercial exploitation of captive chimpanzees in the United States, particularly in light of increasing globalization over the last twenty years, contributes to the market demand for young chimpanzees taken from the wild for use as pets or entertainment. Dr. Richard Wrangham, Harvard University Professor, Director of the Kibale Chimpanzee Project in Uganda, and chair of the Great Ape World Heritage Species Project, summarizes the process as follows:

The demand for chimpanzees as pets or for entertainment purposes is directly fueled by the species’ commercial exploitation in the United States. The U.S. is the primary country involved in exploiting chimpanzees for entertainment purposes: American media floods the world

with long-lasting images (both in film and print) of young chimpanzees in television shows, movies, and advertisements, dressed as humans and frivolously depicted. Such images mislead viewers around the globe into believing that chimpanzees make good pets . . . In addition to increasing demand for pet and entertainment chimpanzees, both domestically and internationally, American media broadcasts the commercial use of this imperiled species and increases international commercial interest in trading the species. Thus, exploitation of captive chimpanzees in the U.S. negatively impacts wild populations by fueling poaching and trafficking of the species.

(Declaration of Richard Wrangham at ¶ 9 (emphasis added); see also Declaration of Jane Goodall at ¶ 11 (“[I]t is clear that the use of chimpanzees in entertainment is a significant driver for the demand for pet chimpanzees.”); Declaration of Ian Redmond at ¶ 8 (“A driving force for this international market is the legality of private ownership and sale of chimpanzees in the United States, which is well known throughout the world.”); Declaration of Deborah Cox at ¶ 9; Declaration of Brian Hare at ¶ 10).

The possibility that disparate treatment of the captive members of this species would lead to its further demise in the wild was precisely the concern that, more than 30 years ago, led the Service to reject the notion that it could simply “delete” captive populations from the list of endangered species. The Agency explained that such a deletion “could make it impossible to enforce the Act for wild populations.” (See 43 Fed. Reg. 16144, 16145 (April 14, 1978) (emphasis added)). Indeed, at that time, the agency concluded that if it were ever to attempt such exemptions for captive populations it “should do so only for species in which wild populations are sufficiently protected,” because “[o]therwise, such action could interfere with the effectiveness of the Act.” (Id.). Clearly, as demonstrated in this petition and the accompanying declarations of world-renowned chimpanzee experts, this species is not one for which “wild populations are sufficiently protected.” It is, therefore, not surprising that the disparate treatment of captive chimpanzees has negatively impacted wild populations.

Because the commercial exploitation of chimpanzees in the U.S. is well-known throughout the world (as discussed in depth below), in addition to increasing poaching and trafficking, the lack of protection for captive chimpanzees in the U.S.

undermines conservation by impairing efforts to protect the species in the wild. Dr. Brian Hare, a professor of Anthropology at Duke University who has extensively studied chimpanzees in Africa, both in the wild and at PASA sanctuaries where infants are rehabilitated after being confiscated from poachers, traffickers, and private owners, describes the impact as follows:

In my experience, this hypocrisy of the U.S. in allowing domestic exploitation of chimpanzees while simultaneously arguing they must be conserved in Africa, results in a loss of political capital, making it more difficult for western conservationists to convince African communities and decision-makers to take action to protect chimpanzees.

(Declaration of Brian Hare at ¶ 11 (emphasis added)).

Dr. Wrangham emphasizes the importance of these relationships to the survival of the chimpanzee species:

Commercial exploitation of chimpanzees in the U.S. not only directly threatens wild populations, but it also threatens the species indirectly by damaging the relationships and credibility essential for successful conservation efforts. In my experience, people in Africa are shocked to discover that in America it is legal to buy and sell chimpanzees, while it is illegal in African range countries. This perceived inequity creates a substantial obstacle for western conservationists such as myself when we approach countries where the species survives in the wild, teetering in many cases on the edge of extinction, and ask communities and government officials to do even more to protect chimpanzees. Such requests are often met with suspicion, and even antagonism, in light of the fact that the U.S. offers almost no protection for chimpanzees living within its own territory and allows rampant commercial exploitation of the species for private profit. The problem of moral consistency is a very real one – it is extremely awkward to be an advocate for conservation of this species when coming from a country that is arguably the most powerful in the world, and has

many captive chimpanzees, but does not have the same high legal standards as chimpanzee range countries.

(Declaration of Richard Wrangham at ¶ 10 (emphasis added); see also Declaration of Deborah Cox at ¶ 11; Declaration of Ian Redmond at ¶ 11).

The experts further explain that the pervasive exploitation of captive chimpanzees in this country is antithetical to conservation because it both misrepresents the biology and behavioral needs of the species, and leads the public to believe that there is no urgency to protecting this particular species because it is so readily available for commercial use:

[I]n addition to the misrepresentation of basic chimpanzee biology, prevalent media depictions of chimpanzees acting as frivolous sub-humans have led viewers into the misconception that the species is not endangered in the wild. When the public does not have an understanding of the severity of the threat of extinction to a species, it may be difficult to garner the required public support for conservation measures.

(Declaration of Jane Goodall at ¶ 11 (emphasis added); see also Declaration of Richard Wrangham at ¶ 9 (images of entertainment chimpanzees “imply that since the species is prevalent on the screen it must also be prevalent in the wild.”); Declaration of Brian Hare at ¶ 9; Declaration of Deborah Cox at ¶ 10).

Exploitation Undermines Domestic Conservation Efforts

In addition to the impacts the split-listing has on wild chimpanzees, permitting the rampant commercial exploitation of chimpanzees held in captivity in this country also undermines domestic conservation efforts. FWS internal documents regarding the agency’s 12-month decision to upgrade the species in the wild to “endangered” status confirm that exempting the captive members of the species in the U.S. from the protections of the Act was done primarily to “facilitate[] biomedical research . . .” (See Memorandum to the Director from Regional Director, Region 8 (Nov. 16, 1988) at pg. 2 (emphasis added)). However, in the final promulgation of the “special rule” for the chimpanzee, the agency announced a broader rationale, and stated that the regulation “was intended to facilitate legitimate activities of American research institutions, zoos, and entertainment operations.” (54 Fed. Reg. at 8152 (emphasis added)).

The ESA provides that “[w]henver any species is listed as threatened,” the FWS “shall issue such regulations as [it] deems necessary and advisable to provide for the conservation of such species. (16 U.S.C. § 1533(d) (emphasis added)). However, the split-listing approach for *Pan troglodytes* has done nothing to “conserve” the captive members of the species – on the contrary, it has only led to the blatant commercial exploitation of these animals by the entertainment, pet, and biomedical research industries, which is often accompanied by abuse and neglect, and which invariably deprives these animals of any semblance of their natural behaviors. (See Section III(A), below). Such exploitation undermines the efforts of the AZA Chimpanzee Species Survival Plan, which is the only properly managed captive breeding program in the U.S.

As explained by Stephen Ross, Chair of the Association of Zoos and Aquariums’ Chimpanzee Species Survival Plan, the SSP “primarily aims to manage the 264 captive chimpanzees that currently live in 35 AZA-accredited zoos to maintain genetic integrity of the population as a hedge against extinction of the species.” (Declaration of Stephen Ross at ¶ 5). However, nearly 2,000 chimpanzees who are not living in AZA-accredited zoos do not participate in the SSP, and these chimpanzees “rarely, if ever, contribute to the conservation of the species, and in fact more often [their ownership] actively undermine[s] conservation efforts,” because they are “not properly managed to maintain genetic integrity . . .” (*Id.* at ¶ ¶ 7 – 9). Unmanaged breeding of captive chimpanzees in the U.S. dilutes the genetic integrity of those chimpanzees and subverts efforts to ensure that all chimpanzees in the U.S. are managed to benefit the conservation of the species.

Not only does exploitation of chimpanzees harm the species, but it has severe negative impacts on the individual chimpanzees as well. As Dr. Jane Goodall, the world’s leading expert on chimpanzees, explains in her accompanying declaration, chimpanzees used in entertainment are often physically abused:

Because of their strength, curiosity and intelligence, chimpanzee performers may frequently be subjected to abuse by their trainers to enforce obedience when exploited for circus acts, television shows, movies and advertisements. It is telling that trainers do not typically allow the public to witness their training sessions and never allow them to witness their “pre-training” sessions. However, instances of abuse behind the scenes have been documented on a number of occasions, and I have been told verbally about such incidents, as well.

(Declaration of Jane Goodall at ¶ 10 (emphasis added); see also Declaration of Peregrine Lee Wolff at ¶ 9).

Chimpanzees who are commercially exploited and kept as pets often also develop psychological abnormalities as a result of being raised by humans instead of a healthy chimpanzee social group. According to Dr. Goodall:

Pet chimpanzees are suspended between the chimpanzee and human worlds . . . all their lives these pet chimpanzees have been taught to behave like humans so they do not know how to behave like a chimpanzee and seldom integrate successfully into a normal chimpanzee social group. Sanctuaries have been established to cater to the needs of chimpanzees exploited as pets or in entertainment, but there are not enough to cope with the number of privately owned chimpanzees needing a place to go. This has led to a welfare crisis among captive chimpanzees.

(Declaration of Jane Goodall at ¶ 9 (emphasis added)).

Perhaps most traumatic is the experience that most chimpanzees in the U.S. have been subjected to: invasive biomedical research. Dr. Theodora Capaldo, psychologist and President and Executive Director of the New England Anti-Vivisection Society, has studied such chimpanzees, and found:

The typical life of a laboratory chimpanzee is one filled with stress and trauma. Those born in laboratories are taken away from their mothers by coercion or force, prematurely weaned, bottle-fed by one or more humans, and provided with irregular socialization . . . The techniques and conditions intrinsic to life in a laboratory also cause severe stress for chimpanzees housed in biomedical facilities. These chimpanzees experience captivity for sustained periods, social isolation, sensory-motor deprivation, and traumatic disruptions in the form of painful and stressful biomedical procedures. . . . Thus we have seen chimpanzees in a constant state of hypervigilance, self-mutilating in a manner similar to humans who report persistent and unrelieved anxieties.

(Declaration of Theodora Capaldo at ¶ 6-8 (emphasis added)).

The special regulation for the “threatened” captive members of this species, therefore, is certainly not doing anything to “conserve” these animals in any sense of that word – rather, it results in these chimpanzees being subjected to abuse, neglect, traumatic experimental procedures, constant stress, and social deprivation. Yet, “conserve” has a particular meaning under the ESA – it means to do whatever is necessary to recover the species in the wild so that it can be taken off the list of endangered or threatened species. (See 16 U.S.C. § 1532(3) (“conserve” means “to use . . . all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary”). Thus, rather than managing the species to recover wild populations, as required by the ESA, the 1990 split-listing facilitates exploitation that harms individual chimpanzees and the species as a whole.

For all of these reasons, treating captive chimpanzees as “threatened” with a rule that deprives those in the U.S. of the basic protections of the statute is contrary to the purpose of the ESA. As the experts uniformly explain in their accompanying declarations, to ensure the conservation of this species in the wild, it is imperative that the FWS list the entire species as endangered – as required by all the evidence of the detrimental impacts the split-listing approach has had for this species over the last twenty years. (See, e.g., Declaration of Jane Goodall at ¶ 15 (“The lack of protection for captive chimpanzees in the United States sanctions and facilitates the exploitation of a species teetering on the edge of extinction in the wild. The United States Fish and Wildlife Service should accordingly reclassify all captive chimpanzees as endangered and afford all individuals of the species the protections they so desperately need and deserve.” (emphasis added); Declaration of Richard Wrangham at ¶ 11; Declaration of Stephen Ross at ¶ 13).

Fully protecting captive chimpanzees would in no way hamper conservation efforts. Any zoo or other entity in the U.S. that is engaged in legitimate “conservation” efforts for the chimpanzee, such as the SSP, can obtain permission to engage in activities that otherwise “take” this species pursuant to Section 10 of the statute, upon a showing that its activities “enhance the propagation or survival” of the chimpanzee. (16 U.S.C. § 1539(a)(1)(A); see also 50 C.F.R. § 17.21(g) (the FWS’s “captive wildlife registration” system for those engaged in activities that comport with the purposes of Section 10); Declaration of Stephen Ross at ¶ 6 (“The goals of the SSP program and the expertise of the individuals in charge of managing the

chimpanzee population distinguish the SSP population from other captive chimpanzees in the U.S., such as those kept as pets, or for entertainment purposes.”)). However, as the Supreme Court long ago recognized, unless and until Congress acts to exempt otherwise endangered species from the protections of the statute, those species are to be afforded “the highest priorit[y].” (*TVA v. Hill*, 437 U.S. at 174 (emphasis added)).

A. The “Split-Listing” Scheme for *Pan troglodytes* Has Contributed to a Proliferation of Privately Owned and Exploited Chimpanzees, Interfering With Conservation of the Species in the Wild.

As discussed above, captive chimpanzees held in the United States have never received protection under the Endangered Species Act (ESA), and, since 1990, have been listed in a lesser category (“threatened”) than their wild counterparts, who are recognized as endangered. In addition, the Fish and Wildlife Service has promulgated a “special rule” that deprives threatened chimpanzees in the U.S. of all the statutory protection usually granted to listed species. (See 50 C.F.R. § 17.40(c)). Far from providing for conservation, as the ESA requires, this lack of legal protection for captive chimpanzees has promoted exploitation of the species (as pets and for entertainment and biomedical research purposes), and contributed to the further decline of wild populations, as the prohibitions on interstate commerce and take – the cornerstone protections of the ESA – do not apply to captive chimpanzees in the U.S. Remarkably, when devising this split-listing approach, the Service acknowledged that the scheme “was intended to facilitate” the activities of “U.S. research institutions...and entertainment operations” using this imperiled species, 55 Fed. Reg. at 9129 – a basis for listing that is completely contrary to the requirements of the Act. In the absence of a strong federal conservation mandate to protect captive chimpanzees, private ownership and commercial exploitation of chimpanzees have flourished in the last twenty years, with devastating results for the species.

Despite the fact that *Pan troglodytes* is not native to the United States, there are thousands of chimpanzees living here in captivity. Indeed, it is likely that the U.S. is home to more chimpanzees than any other country outside of the species’

historic range.⁶ These captive individuals are kept under the following circumstances:

Table 1 – Current Estimated Number of Chimpanzees in the United States

Setting	Number of chimpanzees
AZA-Accredited Zoos ⁷	264
Chimpanzee Rescue Facilities ⁸	~600
Private Ownership for Pets/Entertainment ⁹	~250
Biomedical Research Laboratories ¹⁰	~1,020
Total	~2,150

⁶ According to personal communication with Stephen Ross, Chair of the AZA’s Chimpanzee Species Survival Plan, numbers of foreign captive individuals are not known with great confidence (especially those from South America and Asia), but given that the U.S. does more biomedical research on chimpanzees than any other country, and probably has more chimpanzees in private ownership than any other country, it is very likely that the U.S. has the largest chimpanzee population outside of African range countries.

⁷ The Association of Zoos and Aquariums (AZA) is the leading accrediting organization in the United States, holding its member institutions to specific standards for animal care, education, wildlife conservation, and science. All chimpanzees held in AZA-accredited zoos are managed pursuant to a Species Survival Plan, which works to maintain genetic integrity through selective breeding, promote chimpanzee conservation, improve husbandry in zoos, improve chimpanzee exhibits, and promote (non-invasive) research and education about chimpanzees. See Chimpanzee Species Survival Plan, Action Plan 2003-2008.

⁸ There are several rescue facilities in the U.S. that provide true sanctuary for chimpanzees formerly exploited as pets, for entertainment, or in biomedical research laboratories. The facilities included in this table, such as Chimp Haven (the National Chimpanzee Sanctuary), are those that keep chimpanzees in social groups and are not engaged in commercial use of the resident chimpanzees. For standards of care for the federally funded chimpanzee sanctuary system, see 73 Fed. Reg. 60410 (October 10, 2008).

⁹ As discussed further below, such private ownership includes personal possession of pet chimpanzees, chimpanzees used by entertainment ventures, and chimpanzees kept in other private facilities that participate in commercial exploitation of chimpanzees (including some self-described “sanctuaries” and sub-standard (“roadside”) zoos that are not accredited by the AZA). Note that there may be overlap between these categories – for example, owners often profit from using their “pet” chimpanzees for entertainment purposes. Because such private ownership is largely unregulated, this number is a best estimate based on the research of Stephen Ross, Chair of the AZA’s Chimpanzee Species Survival Plan.

¹⁰ See Table 2 in Subsection III(A)(3), *infra*, for a list of these laboratories.

As Table 1 illustrates, the vast majority of chimpanzees in the United States are currently, or were formerly, exploited for the pet or entertainment trade or as biomedical research subjects. The subspecies most common in the United States is *Pan troglodytes verus*,¹¹ indigenous to West Africa and one of the most endangered subspecies of chimpanzee, as discussed in Section III(B), below.

1. Chimpanzees in Entertainment

a. Chimpanzees Are Widely Exploited for Entertainment in the U.S.

Pursuant to the Service's split-listing of the species, the United States openly permits the private ownership and use of chimpanzees for commercial entertainment purposes, and hundreds of chimpanzees are subjected to this exploitation. Through a simple internet search, chimpanzees are available to rent for birthday parties, school functions, fund-raisers, office parties, and other special occasions, and some businesses even allow the public to have physical encounters with this wild species. Chimpanzees are also frequently seen in the media (e.g. movies, television shows, and advertisements) and live performances. These entertainment chimpanzees are owned by businesses and individuals that profit from leasing animals for commercial use.¹² Following are examples of the prolific exploitation, facilitated by the split-listing, of chimpanzees in the U.S. for entertainment purposes. (See Appendix G).

Agencies that Lease Chimpanzees for Profit:

- **Amazing Animal Productions** [www.amazinganimalproductions.com]
16203 Cajon Boulevard San Bernadino, California 92407

Following a lawsuit alleging that the company's trainer, Sidney Yost, routinely physically abused four chimpanzees to get them to perform, in 2006 Yost agreed to cease using the species for commercial purposes. However, photographs documenting the working lives of these chimpanzees are still prominently displayed on Yost's company website (available at <http://www.amazinganimalproductions.com/gallery/gallery.html>).

¹¹ John J. Ely et al., *Subspecies composition and founder contribution of the captive U.S. chimpanzee (Pan troglodytes) population*, AM. J. OF PRIMATOLOGY vol. 67, issue 2, 223-241 (October 2005).

¹² The going rate for a chimpanzee "actor" is about \$1,000 per day. Bruce Horovitz, *You just can't go wrong with a chimp*, USA TODAY (February 7, 2005); Jeremy Mullman, *Advertising Chimps Get Fat Raises*, ADVERTISING AGE (April 3, 2006).

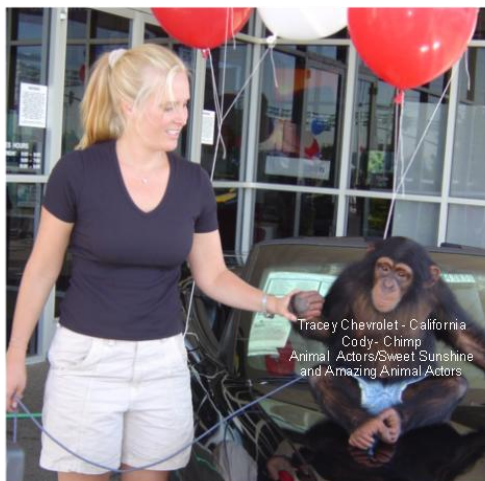


- **Animal Actors of Hollywood, Inc.** [<http://www.animalactors.net>]
860 West Carlisle Road Thousand Oaks, California 91361

The company's website claims credit for providing a chimpanzee for use in a Panasonic television commercial.

- **Animal Actors International**
[<http://www.animal-actors.com/>; <http://www.mosttalentedanimal.com/>]
33288 Ortega Hwy. Lake Elsinore, California 92530

This agency provided Ollie the Chimpanzee for an Ever Ready Battery commercial and a Kimberly Clark commercial; also provided a chimpanzee for a Tracy Chevrolet car dealership event in California:



- **Animal Actors Worldwide** [www.animalactorsworldwide.com]

The company's website claims credit for using a chimpanzee in the television series "Criss Angel: Mindfreak," "Blue Collar Comedy: Ron White Special," and "Rogue Nature," and boasts that it leases its animals for use on television shows "to teach the world about our fantastic animal actors."

- **The Animal Agency** [www.theanimalagency.com]

The company's website is unclear as to whether it owns chimpanzees, but claims substantially the same credits as Animal Actors Worldwide, and displays the following example of trained chimpanzee behavior:



- **Bob Dunn's Animal Services** [www.animalservices.com]

Over the years, the company provided chimpanzees for "Planet of the Apes," "The Chimp Channel," and the Career Builder commercials. In 2005, after 30 years in the business, Mr. Dunn finally ceased using chimpanzees in his animal entertainment business and retired 11 chimpanzees (including "Bubbles," Michael Jackson's former pet) to a facility in Florida. Two chimpanzees raised by Dunn (Ollie and Buddy), were involved in the attack on St. James Davis at a California facility and were shot dead. (See the following section for more information on Bubbles and St. James Davis.)

- **Boone's Animals for Hollywood** [www.boonesanimals.com]
31550 Oakhorn Ave Castaic, California 91384

The company's website has pictures of its chimpanzees on sets of movies and television shows, including:



- **Chimp Party** [<http://www.chimpparty.com>]
12338 State Road CC Festus, Missouri 63028

Chimpanzees owned by the company have appeared in print media for American Greetings, Hallmark, and Wal-Mart, and also make public appearances at trade shows and other events. This facility also bred Travis, the pet chimpanzee involved in the attack in Connecticut in February 2009, discussed in the next section.

- **Critters of the Cinema** [<http://www.crittersofthecinema.com/crithome.htm>]
P.O. Box 378 Lake Hughes, California 93532

This company provided chimpanzees for “Power Rangers Turbo” television series in 1997.

- **Goin’ Ape** [aka Lill’s Performing Chimps]
P.O. Box 9147 Auburn, California 95604

This agency allows chimpanzees to be used in Hallmark Cards and in films such as “MVP: Most Valuable Primate” and its sequel, “MVP2: Most Vertical Primate” (pictured below).



- **A Great Ape Experience** [<http://www.agreatapeexperience.com>]
Festus, Missouri

The company recently sent out a press release advertising one of its star chimpanzees, Kenzy, who appeared in the movie *Speed Racer*, the television shows “Hogan Knows Best” and “ER,” and a television commercial for the Kansas City International Airport. The company also has an eighteen month-old chimpanzee named Bentley who recently appeared at the grand opening of a bowling alley in New York City, as discussed below.



- **Hollywood Animals Inc.** [<http://www.hollywoodanimals.com/index.htm>]
Santa Clarita, California

The company's website says: "Monkeys, chimpanzees, orangutans, baboons, and other primates are available worldwide for films, television, documentaries, advertising and events. Our little simians are happy professional animal actors...our monkeys and chimps are full of expressions...poses...emotions..."



- **Jungle Exotics** [<http://www.junglexotics.com/>]
San Bernardino, California

The company's credits include providing a chimpanzee for Coca Cola and Hillshire Farms commercials; for the movies "Tarzan," "Altered States," and "Animal Behavior;" for a music video for Sugar Ray; and for episodes of the television shows "The Practice," "Danger Bay," "Battlestar Galactica," "Get a Life," and "Voice of Disney."

- **Movieland Animals, Inc.** [www.movielandanimals.net]
818 FM 1283 Pipe Creek, Texas 78063

The company's website states: "Jody the Chimp - Approximately 100 lbs. Very friendly nature - works well with people. Jody is a good double for a mother chimp and is very gentle with a baby chimp."



- **Paws for Effect** [<http://www.pawsforeffect.net/>]
P.O. Box 650 Lake Hughes, California 93532

The company's website shows pictures from the sets of prior television and movie performances by their chimpanzees (such as one pictured below).



- **Rosaire-Zoppe Chimpanzees** [<http://www.capitolint.com/chimp.htm>;
<http://www.circusrosairemovie.com/Synopsis/>;
<http://www.youtube.com/watch%3Fv%3DJESXryUqa9Q>]
P.O. Box 50217 Sarasota, Florida 34232

The company's website states: "The Rosaire-Zoppe Chimpanzees are accomplished studio performers. Their acting engagements have included live television appearances, movie parts, commercials and print advertising...featured at Disneyland, The Tonight Show, Ringling Brothers and Barnum & Bailey, Shrine Circuses and major rodeos throughout the

U.S.” The Rosaire-Zoppe chimpanzees also appear in a live show entitled “Chimpfabulous,” in which chimpanzees ride horses and act like ballerinas.

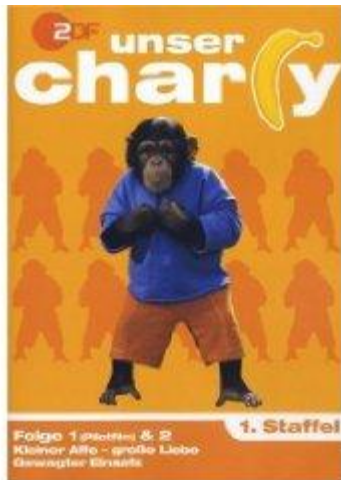


- **Serengeti Ranch, LLC.** [www.serengetiranch.com]
P.O. Box 187 Acton, California 93510

The company’s website advertises “Safe, reliable Chimpanzees;” “Many looks and behaviors;” and “Babies to Adults available.” The company lists chimpanzee credits including television shows “Get Smart,” “Head of the Class,” and “Name Your Adventure;” advertisements for Mazda and Sprite; and music videos for Marilyn Manson and Red Hot Chili Peppers.

- **Steve Martin’s Working Wildlife, Inc.** [<http://www.workingwildlife.com>]
14466 Boyscout Canyon Road Frazier Park, California 93225

The company has provided chimpanzees for use in movies including “Alice in Wonderland” and “Babe: Pig in the City,” and television shows including “Unser Charly,” for which young chimpanzees are flown from California to Germany for filming.



- **Studio Animal Services, LLC** [<http://www.studioanimals.com/exotic.htm>]
28230 San Martinez Grande Canyon Road Castaic, California 91384

The company's website shows a picture of the apes, including chimpanzees, they offer for commercial use.



- **T.I.G.E.R.S.** [<http://www.tigerfriends.com/home.html>]
P.O. Box 31210 Myrtle Beach, South Carolina 29588

This facility primarily houses big cats, but the company's website also highlights a resident chimpanzee who is used for commercial purposes, including making appearances with tiger and puma cubs.



- **Valbuena Chimps** [<http://www.valbuenachimps.com>]
3036 Lake Vista Drive Clearwater, Florida 33759

These chimpanzees are used in photographs for greeting cards and in television commercials.



- **Worldwide Movie Animals** [www.worldwidemovieanimals.com]
P.O. Box 802474 Santa Clarita, California 91380

Chimpanzees used in the movies “Mr. Wrong” and “Fluke,” and in commercials for Snickers, “Got Milk?” and Toshiba. Pictures of the company’s chimpanzee “actors” are below.



Television Shows Featuring Chimpanzees:

- “**Keeping up with the Kardashians**” (2009)
[http://kimkardashian.celebuzz.com/2009/02/we-got-a-monkey.php?bfm_index=7&bfm_page=0]



This popular reality show focuses on the life of a celebrity family, and recently featured an episode with a pet chimpanzee. The rental of this young chimpanzee was advertised and discussed – and the chimpanzee is inaccurately referred to as a “monkey” – on the show’s website:

As you guys know season three of *Keeping Up with the Kardashians* is close to airing and we have some crazy surprises. One of them is... **WE GOT A MONKEY!!!!** Her name is Suzy, she is three years old, and she is a handful! She steals our BlackBerrys and climbs up my mom's bed. Having a monkey is a lot of work. Suzy always has her diaper on and we are the ones who have to change it! It's just like having an infant but worse because Suzy runs

around like a teenager! She always needs to be fed, drinks out of a bottle and she loves Capri Sun juices! You have to check out the new season to get all of the details... but how cute is she!?

Sample comments on this post demonstrate how the use of chimpanzees for entertainment purposes can influence viewer interest in acquiring a pet chimpanzee.¹³

- **“Deal or No Deal”** (May 11, 2009)
[http://nbcumv.com/release_detail.nbc/entertainment-20090415000000-039dealornodea.html]

An NBC press release at the beginning of the season announced that “new episodes feature a chimpanzee that plays against a contestant.”

- **“Late Night with Conan O’Brien”** (January 22, 2009)
[http://www.nbc.com/Late_Night_with_Conan_O'Brien/] The show’s website highlights an episode in which Mr. O’Brien has “Noah the Chimp” on the set dressed as a chauffeur, pictured below.



¹³ [February 26, 2009 1:19 PM Stiletto Vixen says:](#) | [Reply:](#) LOL too cute. I've always wanted a chimp every since Michael Jackson had bubbles of course the answer was no. The picture with the blackberry is cracking me up.

[February 20, 2009 4:39 PM emilybaby says:](#) | [Reply:](#) OMG IVE WANTED A MONKEY FOR THE LONGEST TIME! BABY MONKEYS ARE SO CUTE! GOOD LUCK THOUGH KIM!

[February 20, 2009 9:37 AM Cassandra says:](#) | [Reply:](#) OMG! I have always wanted a chimp, that is a crazy surprise! and it must be a lot of work, do you guys still have it? The pictures of it with the blackberry are hilarious haha<3

[February 20, 2009 8:40 AM xoxijenxox says:](#) | [Reply:](#) omg thats crazyyyy!! she is so cute! haha i cant picture Bruce with a monkey lol. I think i need 2 get 1 lol shes so cute and she looks like so much fun.

[February 20, 2009 6:37 AM Rebecca says:](#) | [Reply:](#) Omg Kim it has always been my dream to get a Chimp. they are my fav animal and i want 1 so bad. u r so lucky

[February 20, 2009 6:15 AM Angela A.** says:](#) | [Reply:](#) lol wow thats so crazy, i didnt even know it was legal to have a chimp, did you have to get a license? i think its fab! & shes soo adorable!

- “ABC 7 Florida” (2009) A newscast shows an infant chimpanzee¹⁴ recently transferred from an out of state facility to the Big Cat Habitat, the facility from which the Rosaire-Zoppe chimpanzees operate. [http://www.mysuncoast.com/global/story.asp?s=10536831]



- “Unser Charly” (1995-Present) This series about a family with a pet chimpanzee features chimpanzees from Steve Martin’s Working Wildlife, a California company, and is filmed in Germany (the young chimpanzees travel to and from the set).



- “1 vs 100” (February 1, 2008) A game show episode featuring a chimpanzee as a contestant. [http://www.youtube.com/watch?v=xXq_gMoB0e4]

¹⁴ In January 2010, this chimpanzee was at the center of a lawsuit: James Michael Casey (“A Great Ape Experience”) claims that his ex-wife Connie Braun Casey (“Chimp Party”) gave the chimpanzee to Gini Valbuena (“Valbuena Chimps”) in violation of their divorce settlement, and sought custody of the young chimpanzee. See <http://www.heraldtribune.com/article/20100122/ARTICLE/1221032/2416/NEWS?p=all&tc=pgall>

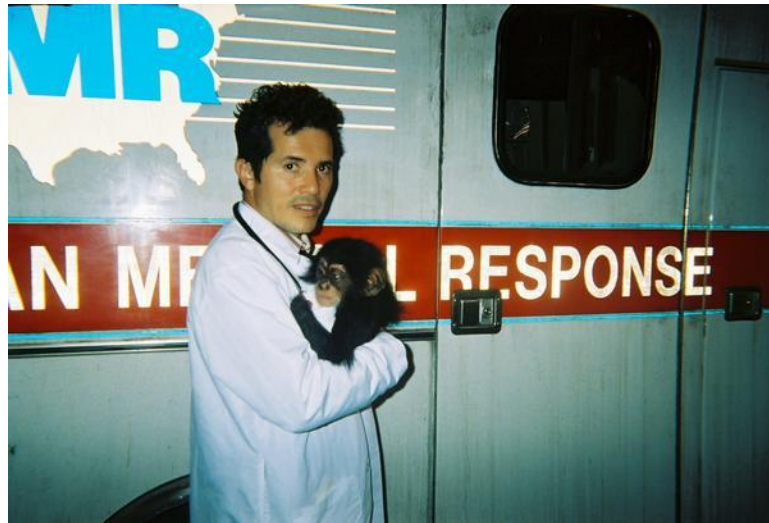
- **“Criss Angel: Mind Freak”** (2007) The illusionist performs tricks for two chimpanzees dressed in human clothing in a hotel room. [http://www.youtube.com/watch?v=EZHsj3hgQ_8]
- **“The Today Show”** (2007, 2006) On May 15, 2006, Katie Couric competed against a chimpanzee in a demonstration using a digital camera. [http://tech.yahoo.com/blogs/raskin/181;_ylt=AvpPGZfJ2NZ7McfaNZ1_y0ReMJA5]



- **“Yes, Dear”** (January 11, 2006) An episode of this sitcom featured chimpanzee “actors.”
- **“Hogan Knows Best”** (2006) An episode of this reality show featured the famous family keeping an infant chimpanzee as a pet. [<http://www.vh1.com/video/play.jhtml?id=1532547&vid=88527>]



- **“ER”** (2005) An episode of this popular drama featured “Kenzy the Chimp” as an infant. Kenzy has also been in other movies and commercials.



- **“The Dennis Miller Show”** (2004) This talk show featured a chimpanzee as a “co-host” for several episodes.
- **“Monk”** (2004) An episode featured a chimpanzee in a diaper suspected of murder.
[http://www.usanetwork.com/series/monk/theshow/episodeguide/episodes/s3_panicroom/index.html]
- **“That 70’s Show”** (September 29, 2004) The episode featured a chimpanzee dressed in a racing suit.
- **“Extreme Makeover Home Edition”** (September 26, 2004) An episode of the show featured one of the chimpanzees who was later removed from the custody of trainer Sidney Yost after allegations of chronic abuse.
- **“Man vs. Beast”** (2004) One episode featured a chimpanzee racing a Navy Seal through an obstacle course.
[<http://www.youtube.com/watch?v=3wbVIgVi66k>]
- **“Pepsi’s Play for a Billion Sweepstakes”** (2004, 2003) For two years in a row the televised drawing for the sweepstakes winner featured a chimpanzee dubbed “Mr. Moneybags.”



- “**Lizzie McGuire**” (November 21, 2003; March 21, 2003; March 8, 2002) This popular children’s program had three episodes featuring a chimpanzee, including a show in which the chimpanzee completes one character’s math homework.
- “**The Chimp Channel**” (1999) An entire television series of chimpanzee “actors” satirizing television shows and movies. [http://www.youtube.com/results?search_query=chimp+channel&search_type=&aq=f]



- Chimpanzees have also been featured as “guests” on many late night talk shows over the years, including “**Late Show with David Letterman**,” “**The Tonight Show with Jay Leno**,” and “**The Craig Kilborn Show**.”

Movies Featuring Chimpanzees in unnatural settings:

- **“Space Chimps”** (2008) – The movie featured animated chimpanzees, but the film was promoted at events with real chimpanzees.



- **“Speed Racer”** (2008) – Two chimpanzee “actors” played the role of the main character’s pet “Chim-Chim,” which included driving a golf-cart. There were reports a chimpanzee was beaten after biting a child actor on set.



- **“Walk Hard: The Dewey Cox Story”** (2008) The movie’s star actor, John C. Reilly, later remarked on his scenes with the chimpanzee, saying that when he yelled furiously for comedic purposes the chimpanzee appeared to be fearful. [<http://www.cinematical.com/2007/12/20/junket-report-walk-hard-the-dewey-cox-story/>]



- **“Evan Almighty”** (2007) This film featured many live exotic animals, including chimpanzees, interacting with human actors.



- **“Grandma’s Boy”** (2006) This movie shows a chimpanzee dressed in human clothing playing video games with the actors.



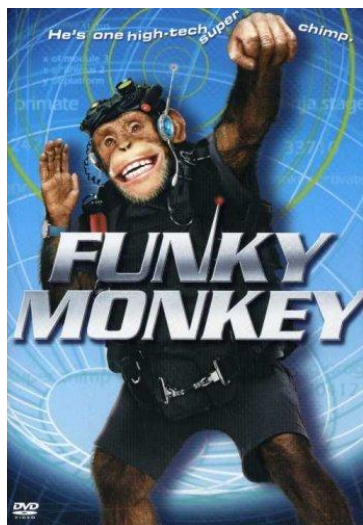
- “**Spymate**” (2006) As the lead character in this film, a chimpanzee is portrayed as a secret agent who fights criminals.



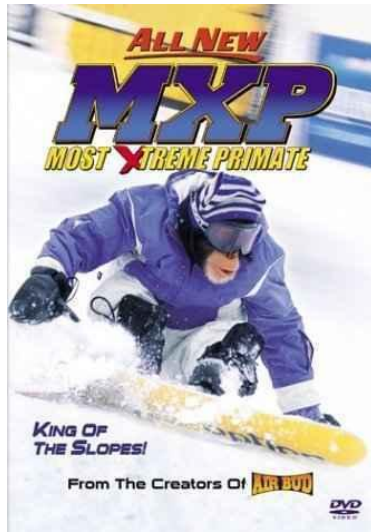
- “**The Reel Monkey**” (2006) Although this film purported to show chimpanzees in the wild, it actually used captive chimpanzee “actors” performing unnatural behaviors who then mingled with human actors at an award ceremony, pictured below.



- **“Funky Monkey”** (2004) This movie features a chimpanzee “actor” who performs martial arts.



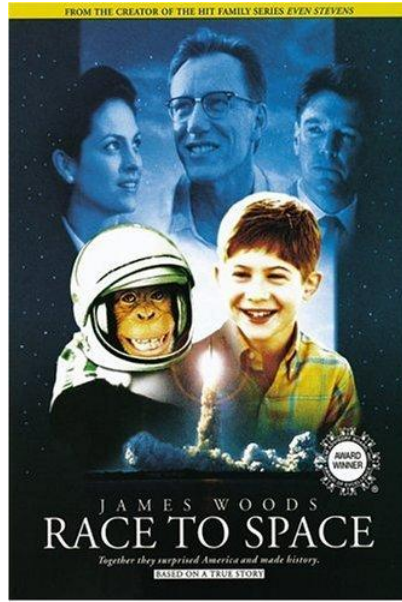
- **“MXP: Most Extreme Primate”** (2003) This is the third installment of a trilogy (the original film and its sequel are discussed below) that features a chimpanzee who befriends a young boy and the two enter a snowboarding competition together.



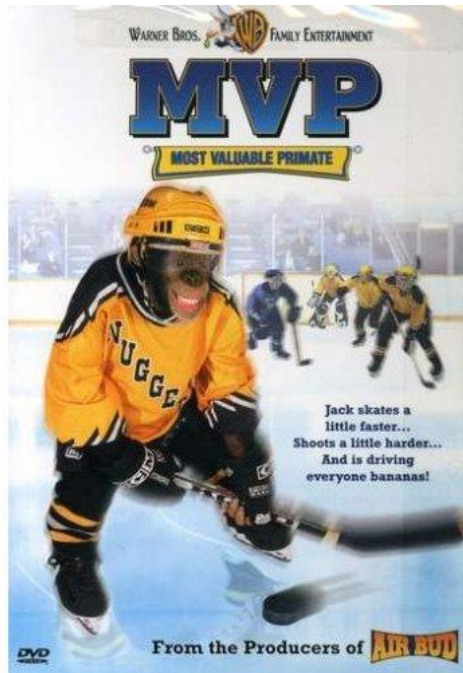
- “MVP 2: Most Vertical Primate” (2002) In this film a chimpanzee and a runaway foster child pair up to support each other as they both compete in skateboarding events.



- “Race to Space” (2001) This film features a chimpanzee “actor” who develops a close bond with a young boy.



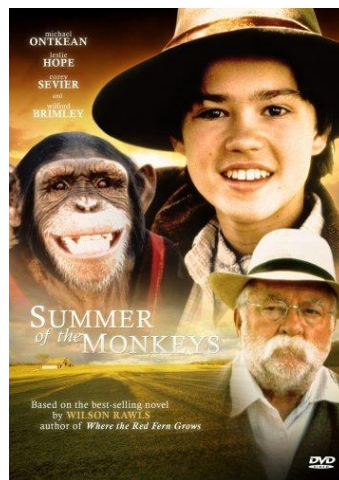
- “MVP: Most Valuable Primate” (2000) This film features a chimpanzee who has the IQ of a genius, plays ice-hockey on a children’s team, and lives with a human family.



- “Babe: Pig in the City” (1998) In this popular children’s movie the lead character has several scenes with a group of chimpanzees who are part of a traveling entertainment act.



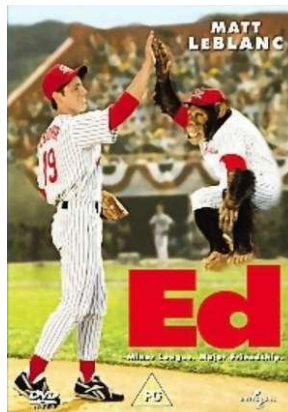
- **“Summer of the Monkeys”** (1998) This adventure film features a teenage boy who is trying to capture three chimpanzees who escaped from a circus.



- **“Buddy”** (1997) This movie depicts the life of a famous socialite who keeps a menagerie of wild animals, including chimpanzees, as pets.



- **“Rocketman”** (1997) This comedy features a mischievous chimpanzee on a space mission with an accident-prone professor.
- **“Ed”** (1996) In this movie, a chimpanzee “actor” plays a famous third-baseman who lives with his best friend, the team’s pitcher.



- **“Mr. Wrong”** (1996) Chimpanzees for this romantic comedy were provided by Worldwide Movie Animals, LLC.
- **“Fluke”** (1995) This children’s movie features a chimpanzee saving a puppy from a burning building.

Advertisements Featuring Chimpanzees:

- **Castrol Oil** (2009) This Super Bowl commercial showed chimpanzees closely interacting with humans and working as mechanics on a vehicle.



- **Sprint Nextel** (2009) The company featured a chimpanzee in an advertisement shown in movie theaters to remind patrons to turn off their cell phones, but after learning about the abusive training methods and conservation impacts of such use, the company agreed to stop using chimpanzees in advertisements.
- **Seattle Mariners** (2009) “The Secret”
[http://mlb.mlb.com/sea/fan_forum/commercials_2009.jsp] This commercial for the baseball team features a chimpanzee sitting at a typewriter in a collared shirt.
- **Mattress Warehouse** (2009) “Sleep Monkey”
[http://www.youtube.com/watch?v=eVlqFqL1_e8] A commercial for this retailer shows a chimpanzee dressed in human clothing spinning around on the countertop in a kitchen.
- **Suburban Auto Group** (2000-2009) [<http://www.trunkmonkeyad.com/>] This series of commercials (called “Trunk Monkey”) includes several that feature a chimpanzee who pops out of a car trunk and comes to the rescue of humans in various situations, such as bribing a police officer.



- **Bud TV** (2007-2009) Anheuser Busch had a series of advertisements on its internet channel “Bud TV” called “Replaced by a Chimp,” featuring chimpanzees acting in professional positions, such as an advertisement executive and dentist.

[http://www.youtube.com/results?search_query=replaced+by+a+chimp&search_type=&aq=f]



- **Kansas City International Airport** (2008) This commercial features a juvenile chimpanzee parking at the airport and boarding a flight.



- **Sega/Wii** (2008) A commercial for the “Samba de Amigo” video game featured a chimpanzee interacting with a family, but was pulled from television after the company learned about the impacts of such exploitation. [<http://www.youtube.com/watch?v=lr5Npu9fjRw>]



- **Arby's** (2007) This commercial features young chimpanzees in a laboratory setting who line-dance to a song on the radio. While the dancing is simulated using digital technology, live chimpanzees were also used in the commercial.



- **Build-a-Bear** (2007) A commercial for this popular children’s toy featured a chimpanzee dressed in clothing, holding a guitar, and riding a skateboard.
- **Career Builder** (2006-2007) A two year ad campaign featuring chimpanzees dressed in suits and engaging in office antics debuted during the Super Bowl.



- **Bud Light** (2006) This Super Bowl commercial features a chimpanzee “flirting” with a human actress.



- **Comcast Cable** (2006) The company agreed to stop showing an ad that featured a juvenile chimpanzee “actor” after learning about the mistreatment that often accompanies such performances.
- **Jackson-Hewitt** (2006) This advertisement features a chimpanzee sitting on the lap of a Tarzan-type character while listening to tax advice in an office.



- **HomeUSA Warehouse** (2005) The furniture company pulled several commercials featuring chimpanzee “actors” in diapers wielding axes after learning of the impacts of such exploitation.
- **Keds** (2005) The company pulled a commercial featuring a chimpanzee interacting with a famous actress after learning of the impacts of such exploitation.
- **Verizon Wireless** (2005) This commercial featured a chimpanzee using a banana as a cell phone.
- **3M – Scotch Brite** (2005) In this commercial a chimpanzee helped a human actor clean a pet-store.
- **Jack in the Box** (2005) An advertisement for this fast-food chain showed a couple of chimpanzee “actors” building a space-ship and preparing for takeoff.
- **Puma** (2004) – The company pulled the following advertisement, featuring a young chimpanzee inspecting a shoe, after learning of the impacts of such exploitation.



- **Dodge** (2003) This Super Bowl commercial called “Monkey on my back” featured a chimpanzee hanging onto a human actor in a variety of situations (the play on words incorrectly identifies this species as a “monkey”).



- **Old Navy** (2002) This commercial featured Travis, the chimpanzee involved in the Connecticut attack discussed below, dressed in human clothing and posing with human actors.



- **E*Trade** (2001) [<http://www.youtube.com/watch?v=ONZFkqzuMjI>] This Super Bowl commercial featured a chimpanzee riding a horse through a desolate urban area.

- **Playstation** (1999) [<http://www.youtube.com/watch?v=zIUMBRFXGSc>] In this commercial a group of chimpanzees hijack a banana truck in an advertisement for the video game “Ape Escape.”

Music videos featuring chimpanzees:

- **Kelly Crook** “Can’t Stop” (2009)
[<http://www.youtube.com/watch?v=Egr7Vlo5lKc>] This video shows young girls at an overnight party with a chimpanzee.
- **Fall Out Boy** “Thanks for the Memories” (2007)
[http://www.youtube.com/watch?v=xWHf_vYZzQ8] In this video multiple chimpanzee dressed in human clothing are on the set, acting as directors, filming with cameras, serving food, and playing stringed instruments.



- **Marilyn Manson** “Disposable Teens” (2000)
[<http://www.youtube.com/watch?v=nH4UEcDnbms>] In this video a chimpanzee is seen swinging from a wooden cross and sitting in a throne at a table.
- **Michael Jackson** “Liberian Girl” (1989) This video features a cameo of the artist’s pet chimpanzee “Bubbles” alongside famous actors.
[<http://www.youtube.com/watch?v=PjtI2WZTZ9k>]

Print media featuring chimpanzees:

- **Entertainment Weekly Magazine** (February 2008) This issue had a story entitled “Conan O’Brien’s Strike Diary,” which showed the famous comedian interacting with a young chimpanzee.



- **Oprah’s “O” Magazine** (February 2008) The story entitled ‘Love, the Great Adventure’ featured photographs of a young chimpanzee listening to a couple fight.



- **Portfolio Magazine** “The Evolution of an Investor” (December 2007) The photographs accompanying this story, including on the cover of the magazine, show a chimpanzee reading a newspaper in an office.



- **Wrigley's Gum** (2006) A print ad for Juicy Fruit gum featured chimpanzee “actors” as props.
- **Glamour Magazine** (December 2005) A fashion layout in this issue featured a model holding hands with a young chimpanzee.
- **Flaunt Magazine** (Issue 5, 1999) A chimpanzee “actor” from Amazing Animal Productions appeared alongside Oscar-winning actor Adrien Brody in this issue.



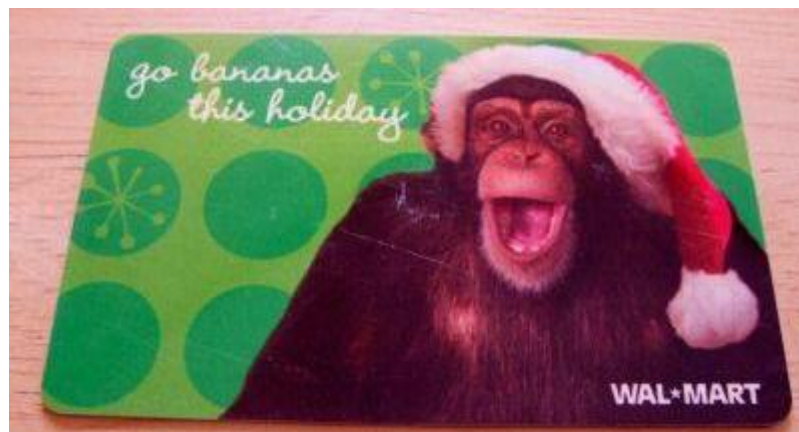
- **Richard Stacks Creative Photography** and posters featuring chimpanzees in unnatural scenes, such as smoking a pipe and cuddling a kitten.
490 Talbot Avenue Pacifica, CA 94044



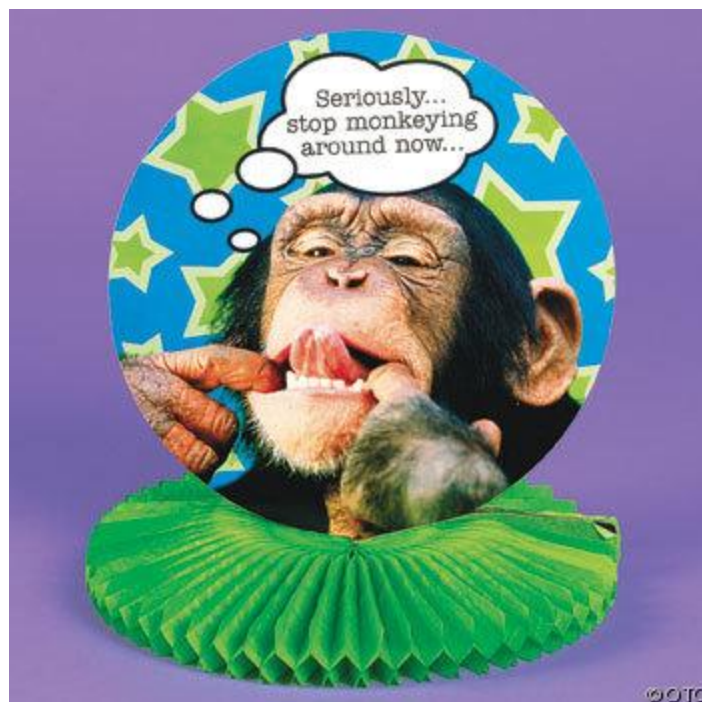
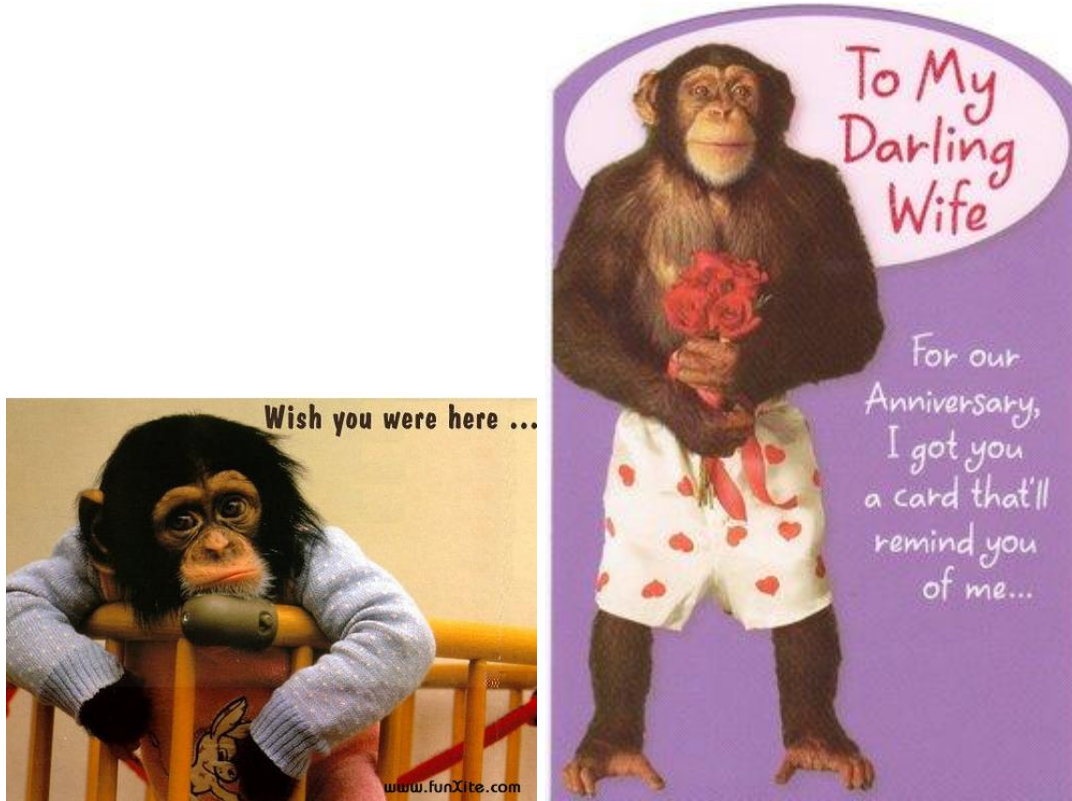
- **Toys R Us** A billboard in New York City for this retail chain features chimpanzee “actors” playing with microphones.



- **Wal-Mart** Gift certificate card for this retailer featured chimpanzee “actors.”



- Greeting cards and party favors for **Hallmark**, **American Greetings**, and **Wal-Mart** show chimpanzees wearing clothing and posed unnaturally. Many of these images are credited to Chimp Party and Goin' Ape (discussed above).



Companies Providing Chimpanzee Encounters:

- **A Great Ape Experience** [<http://www.agreatapeexperience.com>]
Festus, Missouri

This company provided an infant chimpanzee named Bentley for celebrities to interact with at the grand opening of Carnival at Bowlor Lanes in New York City on October 8, 2009. Images of Paris Hilton with Bentley, below, appeared on People Magazine's website and the socialite's Twitter page.



- **Chimp Party** Festus, Missouri [<http://www.chimpparty.com>; see also <http://www.youtube.com/watch?v=uvK6gt42wqc>]
According to the company's website: "Who wouldn't want to have a chimp at their party? This is an unforgettable, entertaining and educational experience that you and your guests will never forget! We'll bring one of our beloved chimps to your event for everyone to enjoy! Group rates are available for Schools, Nursing Homes, Company Events, etc." In addition to the Chimp Party service, this facility also breeds chimpanzees for sale as pets, and is the source of the pet chimpanzee Travis involved in the February 2009 attack in Connecticut, discussed below.



- **Valbuena Chimps, Chimp Encounters**

Clearwater, Florida [http://www.chimpencounters.com;
http://www.youtube.com/watch?v=SrHfNJxj6Vw]

For \$100 per hour, Valbuena Chimps allows patrons to interact with young chimpanzees. A brochure for this service states: “Ever dream of getting up close and personal with a chimpanzee? Well, now you can! We can make your animal lover’s dream come true! Once-in-a-lifetime experience! You’ll Go Ape!”



- **Rosaire-Zoppe Chimpanzees, “Great Ape Encounter”**

Sarasota, Florida [http://www.capitolint.com/chimp.htm]

While some of these chimpanzees are used in a “one-of-a-kind chimpanzee act featuring the world’s only trick and fancy horse-back riding chimp,” the younger individuals are available, for a fee, for personal encounters.



- **Sunrise Exotic Ranch** – Dripping Springs, Texas
[<http://www.youtube.com/watch?v=nZ4yzF8mqmw>]

This facility allows guests to interact with its resident chimpanzees. A lawsuit is currently pending against this company after a visitor suffered injuries from a chimpanzee kept at the bed and breakfast.

- **Suncoast Primate Sanctuary** (formerly Noell’s Ark Chimp Farm) – Palm Harbor, Florida



- **T.I.G.E.R.S.** [<http://www.myrtlebeachsafari.com/welcome.html>]
This facility in South Carolina allows visitors to “have your photo taken holding a tiger cub, orangutan or chimpanzee ‘for a fee’” and invites guests to “monkey around with our apes”



- **People and Chimps Together** [<http://www.chimppact.org/>]
This organization advertises “chimps for people to view and interact with . . .”



- **Yahoo!** [<http://www.flickr.com/photos/ytechmonkey/>]
As part of an advertising campaign in 2006, this company rented a chimpanzee to pose for photographs with passersby in New York’s Bryant Park.



- **Trager Watson private party with rented chimpanzee** (June 21, 2003) [<http://www.newyorksocialdiary.com/partypictures/2003/7.3.03/partypictures7.3.03.php>]



- **Sparky the Clown's Learning Center** [<http://www.sparkyclown.com/>]
This service hosts birthday parties featuring Savanna the chimpanzee.



As evidenced in this sampling, *Pan troglodytes* is pervasively exploited for human amusement. Unfortunately, as explained below and in Section III(B), such use of this imperiled species not only negatively impacts the lives of the individual

chimpanzee “actors” but has detrimental impacts on efforts to save the chimpanzee from extinction.

b. Because Chimpanzees Are So Pervasively Used in Entertainment the Public Believes the Species Is Prevalent in the Wild.

The use of chimpanzees for entertainment purposes negatively impacts the species, regardless of whether the individual chimpanzee featured is bred in captivity or smuggled out of the wild. Multiple studies confirm that when people see chimpanzees portrayed in these unnatural entertainment depictions they acquire misperceptions of the species that undermine legitimate conservation efforts by fueling demand for pet chimpanzees and reinforcing negative conservation attitudes.

A 2001 survey conducted at Chicago’s Lincoln Park Zoo’s Great Ape House found the following:

Although there were some differences in what people know about gorillas versus chimpanzees, the differences found between attitudes toward gorillas versus chimpanzees were more striking. For example, people revealed a more dominionistic attitude [*i.e.*, interest in mastery and control of animals] toward chimpanzees than gorillas. Considering visitors reported more fear of gorillas than chimpanzees, the desire to control chimpanzees may emerge because of our more egalitarian relationship with chimpanzees. Chimpanzees are also smaller than gorillas, and the media portray the youngsters as diminutive, friendly “mini-humans.” In fact, 52% of people agreed that they enjoy television commercials with chimpanzees because they are funny when they act like humans, but only 37% agreed with that statement regarding gorillas. This discrepancy may exist because only chimpanzees are exploited as actors in

the media, but it may also illustrate a difference in attitudes toward the two species.¹⁵

Intrigued by how the public's attitude towards chimpanzees affects conservation of the species, a 2002 pilot study at the St. Louis Zoo asked visitors which of the great apes they thought were endangered, and found that of the people who did not think chimpanzees were endangered, most of them pointed to use of the species in entertainment as a reason for believing the species was relatively prevalent.¹⁶

Highly concerned by the findings of this pilot study, the Chair of AZA's Chimpanzee Species Survival Plan, Stephen Ross, conducted another study. In 2005 a more thorough survey of visitors at Chicago's Lincoln Park Zoo's new Regenstein Center for African Apes confirmed the connection between use of chimpanzees in entertainment and public misperception of this species' status in the wild. The last question on the survey asked respondents to select which of the great apes they thought were endangered: 95 percent responded that gorillas were endangered and 91 percent thought that orangutans were endangered, but only 66 percent believed chimpanzees to be endangered. On follow-up, without any prompting, the most common reason given for why chimpanzees were not believed to be endangered was that the species is commonly seen on television, in advertisements, and movies, and so must not be in jeopardy.¹⁷

A 2006 survey of visitors to the Great Ape Trust in Iowa found similar results: while 94 percent of visitors believed gorillas to be endangered, and 92 percent believed orangutans to be endangered, only 72 percent believed chimpanzees were endangered. These studies have led scientists, including those at the Association of Zoos and Aquariums and its Ape Taxon Advisory Group, to conclude that:

The "frivolous portrayal of chimpanzees – dressed in clothes and trained to perform silly tricks – in the popular media has potentially serious consequences on public conservation attitudes. Here, the data suggest that it creates the impression that chimpanzees may be quite common (i.e., not endangered) and perhaps not worthy of

¹⁵ K.E. Lukas & S.R. Ross, *Zoo Visitor Knowledge and Attitudes Toward Gorillas and Chimpanzees*, J. OF ENVTL. EDUC. vol. 36, no. 4 (2005) (emphasis added).

¹⁶ See Steve Ross, *Not a Laughing Matter: Conservation Effects of Media Portrayals*, CONNECT, 25-26 (September 2008).

¹⁷ Stephen R. Ross et al., *Inappropriate Use and Portrayal of Chimpanzees*, SCIENCE vol. 319, 1487 (2008).

conservation effort or resources.”¹⁸

Entertainment depictions of chimpanzees, therefore, lead the public into believing that the chimpanzee species is not in peril. Further, because almost all entertainment chimpanzees are pale-faced juveniles, viewers are led to believe that the species is small, cute, and docile (*i.e.*, viewers do not acquire an understanding of the aggressive behavior of large adult chimpanzees). These misrepresentations undermine chimpanzee conservation because such efforts depend on a well-informed and motivated public.

Moreover, this reinforcement of negative conservation attitudes perpetuates the pet trade, both domestically and internationally (as discussed below), as people want the cute and cuddly infants they see in the media.¹⁹ (See, *e.g.*, Declaration of Jane Goodall at ¶ 10 (“Chimpanzees used in entertainment are almost always infants and juveniles, leading viewers into the mistaken belief that a cute infant bought by them as a pet will never become a large and potentially dangerous adult, and that this wild, non-domesticated species makes a good companion animal.”); Declaration of Stephen Ross at ¶ 12 (“[I]t is very likely that the use of young chimpanzees in entertainment contributes to increased demand for pet chimpanzees . . .”); Declaration of Jennifer Feuerstein at ¶ 9; Declaration of Patti Ragan at ¶ 7).

Ongoing research conducted at Duke University appears to confirm these results. According to the study’s lead author, Dr. Brian Hare, participants exposed to commercials featuring entertainment chimpanzees are less likely to believe that chimpanzees are endangered, less likely to think that chimpanzees are inappropriate pets, and may be less likely to donate to conservation charities.²⁰

c. Chimpanzees Used in Entertainment Are Abused and Mistreated

Not only does the use of chimpanzees in entertainment mislead the public, perpetuate the pet trade, and, thereby, subvert conservation efforts, but there is substantial evidence that chimpanzees used in the industry are often brutally abused and otherwise mistreated to perform for human enjoyment. As explained by

¹⁸ See Ross, *Not a Laughing Matter*, *supra* note 16, (emphasis added).

¹⁹ The media has long been known to affect the American public’s pet purchasing – for example, the sale, and subsequent abandonment, of Dalmatian puppies increased dramatically following the release of the Disney movie 101 Dalmatians. See Mireya Navarro, *After Movies, Unwanted Dalmatians*, N.Y. TIMES (September 14, 1997).

²⁰ Personal communication with Dr. Brian Hare, January 19, 2010.

the Chimpanzee Collaboratory – a coalition of leading experts on chimpanzee conservation:

By nature, young chimpanzees are active, rambunctious, and easily distracted – qualities diametrically opposed to what trainers need if they are to deliver specific behaviors on cue. Consequently, many trainers rely heavily on physical domination and fear to ensure constant attention and compliance from their performers-in-training. Eyewitness accounts have documented the fact that some trainers pummel chimpanzees with their own fists, beat them with hammers, metal rods, and mop handles. Electric devices also may be used to shock them into submission. This calculated abuse turns the chimpanzees into fearful individuals who will pay attention and cooperate if only to avoid further abuse.²¹

This abuse is not often done in public, although the mistreatment of chimpanzee “actors” may be evident to the public through their facial expressions – for example, unlike humans, when chimpanzees “smile” with lips wide apart and both top and bottom teeth bared, a pose that is often exploited for “comic” purposes, it is usually a natural expression of fear or apprehension, not joy.²²

Sarah Baeckler, a primatologist who worked undercover with one of the agencies that provides chimpanzees for entertainment purposes, witnessed such abuse firsthand:

I saw sickening acts of emotional, psychological, and physical abuse every single day on the job. . . If the chimpanzees try to run away from a trainer, they are beaten. If they bite someone, they are beaten. If they don't pay attention, they are beaten. . . The plain truth is

²¹ The Chimpanzee Collaboratory, *Serving a Life Sentence for Your Viewing Pleasure* (2003). See also *Animal Legal Defense Fund v. Sidney Jay Yost* (complaint, included in Appendix G, alleges Yost had 4 chimps he regularly beat with sticks, routinely punched with his fists, used cattle prods, taunted and intimidated them; the case settled in 2006 and resulted in the chimpanzees being retired to a sanctuary. Another complaint was recently filed against Yost alleging that he violated the settlement by continuing to work with chimpanzees).

²² See Lisa A. Parr & Bridget M. Waller, *Understanding chimpanzee facial expression: insights into the evolution of communication*, SOC. COGNITIVE AND AFFECTIVE NEUROSCIENCE vol. 1, no. 3, 221-228 (2006); Samuel Fernandez-Carriba et al., *Asymmetry in facial expression of emotions by chimpanzees*, NEUROPSYCHOLOGIA vol. 40, 1523-1533 (2002).

this: the only thing that will make them stop behaving like curious, rambunctious chimpanzees, and, instead, routinely perform mundane tasks over and over again on cue is abject fear of physical pain.²³

In addition to physical mistreatment, entertainment chimpanzees suffer psychologically from this exploitation. Dr. Peregrine Lee Wolff, a veterinarian with over twenty years of experience working with chimpanzees, including those involved in entertainment, describes the life of an entertainment chimpanzee:

[Entertainment chimpanzees] are typically pulled from their mothers as infants, several years before they would naturally be weaned, and about a decade before they would become independent in the wild, and are trained to perform unnatural behaviors on command. . . . Trainers use a combination of voice and physical intimidation to coerce certain facial expressions, actions, and performances for human amusement. . . . Chimpanzees previously used in entertainment usually have behavioral abnormalities because of the fact that they are separated from their mothers at such a young age and then reared by humans instead of a healthy chimpanzee social group. . . . Veterinary care for captive chimpanzees used in entertainment and for other commercial purposes is also lacking.

(Declaration of Peregrine Lee Wolff at ¶ 7-11).

The impacts of this exploitation are explained by Patti Ragan, the Director of the Center for Great Apes, a rescue facility for chimpanzees formerly used in entertainment, as pets, and as biomedical research subjects, as follows:

Breeders separate infant chimpanzees from their mothers in the first couple months of life so that an infant taught how to behave as a human pet or trained to perform tricks for human entertainment can be sold to a private owner. . . . This separation is traumatic for both mother and child. . . . Infants destined for the pet and entertainment industry are instead prepared for a life often isolated from

²³ Sarah Baeckler, The Chimpanzee Collaboratory, *Amazing (?) Animal Actors* (October 14, 2003).

others of their kind. . . . [The] vast majority of chimpanzees that have spent their first several years being hand-reared by humans, in a pet, entertainment, or laboratory setting, can suffer from significant psychological disorders. . . . [Some Center for Great Ape] resident chimpanzees “rock,” which is a stereotypical behavior often associated with the need to recreate the comfort of being carried by the mothers they were separated from. It is the role of sanctuaries to work to rehabilitate these behaviors and provide the opportunity for these chimpanzees to live out the remainder of their lives in a species-typical manner.

(Declaration of Patti Ragan at ¶ 5, 9).

Also very familiar with the impacts of captive chimpanzee exploitation is Jennifer Feuerstein, Director of Save the Chimps (STC), the world’s largest chimpanzee sanctuary:

[Chimpanzee] infants are often removed from their mothers shortly after birth so that they may be taught human-like behaviors desirable in these performers and companions. Because chimpanzees are so energetic and strong at even a very young age, trainers and pet owners may use physical abuse to make them behave, pay attention, or perform unnatural tricks for human amusement. . . . Chimpanzees used as pets or entertainers may be castrated or have their teeth removed in a futile effort to make them more manageable. STC has three former circus chimpanzees who have had most of their teeth removed, and three chimpanzees who were castrated by trainers or pet owners, a mutilation which alters their physical development but does not prevent them from becoming dangerous as they mature.

(Declaration of Jennifer Feuerstein at ¶ 7).

Recognizing that the use of chimpanzees in entertainment undermines conservation efforts, and also recognizing the psychological and physical abuse that is associated with such use, experts at both the Association of Zoos and Aquariums and the International Primatological Society (IPS) – an organization of world-

renowned scientists and conservationists – strongly oppose the exploitation of chimpanzees for entertainment purposes.

The AZA has adopted the following position regarding the use of apes in media and commercial performances:

Apes, including chimpanzees, gorillas, bonobos, orangutans, and gibbons, are intelligent, sensitive, long-lived and highly social animals. As humans' closest living relatives, they are fascinating, and ape infants are magnetically appealing. These attributes have made apes popular as performers in commercial entertainment and advertising programs. But this popularity and attractiveness masks the often cruel and dangerous practices commonly required to make apes compliant in such appearances. . . . Dressing apes in human clothing, or training them to engage in unnatural (usually human) behaviors, while entertaining to some, inaccurately portrays their biology and conservation status. Since conservation efforts rely on informed public opinion, these practices serve to undermine communications vital to achieving conservation. The use of apes in advertisements and other commercial performances can lead people to conclude falsely that apes make good pets.

Accordingly, the AZA has called for “eliminating the use of apes as performers,” and “establishing standards to ensure that public presentations and interpretive programs portray apes respectfully and accurately represent the biology and conservation status of apes.”²⁴

In August 2008, the IPS unanimously approved the following statement:

Opposition to the Use of Nonhuman Primates in the Media

WHEREAS live nonhuman primates are often portrayed in the media as frivolous caricatures of humans, dressed

²⁴ Association of Zoos and Aquariums, *White Paper: Apes in Media and Commercial Performances*, at <http://www.aza.org/white-paper-apes-in-media-and-commercial-performances/> (emphasis added).

in clothing and trained to do tricks on command for the amusement of the general public but with disregard to the welfare and conservation consequences; and

WHEREAS many nonhuman primates used as actors in movies and television and as photo props for commercials and greeting cards are often removed from their mothers shortly after birth and are denied opportunities for normal social and psychological development; and

WHEREAS the use of nonhuman primates in this industry often involves aversive techniques to maintain control of these animals; and

WHEREAS the inappropriate portrayal of nonhuman primates inaccurately conveys their biology and conservation status and may affect public attitudes including those in range countries where interactions with these animals have potential damaging consequences; and

WHEREAS evidence suggests that many nonhuman primate species are susceptible to many of the pathogenic infections that afflict humans and the transmission of infection can occur in both directions, especially in performing circumstances in which primates are in direct proximity with public audiences including children and the elderly,

The International Primatological Society therefore opposes the use of nonhuman primates as performers, photo props or actors.²⁵

As discussed in this section and acknowledged by experts, the exploitation of chimpanzees for entertainment purposes negatively impacts both individual animals and the species as a whole:

Not only is exploitation of chimpanzees . . . for entertainment purposes a horrible sentence for individual

²⁵ International Primatological Society, *Opposition to the Use of Nonhuman Primates in the Media* (2009).

captive chimpanzees, it also both indirectly and directly threatens wild populations and undermines conservation efforts. . . . Thus, commercial exploitation of *Pan troglodytes* contributes to the species' decline, regardless of whether the exploited chimpanzee is born in captivity or in the wild.

(Declaration of Jane Goodall at ¶ 11).

Chimpanzees privately owned for pet or entertainment purpose have particularly negative conservation impacts. Individuals purchase these chimpanzees for \$45,000-\$65,000 from one of several private breeders in the U.S. . . . The breeding in these facilities is not properly managed to maintain genetic integrity, and infants are separated from their mothers soon after birth.

(Declaration of Stephen Ross at ¶ 9; see also Declarations of Richard Wrangham, Brian Hare, Deborah Cox, and Ian Redmond).

2. Chimpanzees Used as Pets

As a direct result of the split-listing of the species, which allows the “take” of captive chimpanzees in the U.S., personal possession of chimpanzees is legal in over half of the states in this country.²⁶ Some of these states require a permit for pet

²⁶ The following states prohibit pet ownership of chimpanzees: Arizona (Az. Admin. Code R12-4-401 *et seq.*), California (Cal. Code Regs. Tit. 14 § 671 *et seq.*), Colorado (Co. Rev. Stat. Ann. § 35-80-108), Connecticut (Conn. Gen. Stat. Ann. § 26-40a), D.C. (D.C. Stat. § 8-1808), Florida (Fl. Admin. Code § 68A-6.002 *et seq.*), Georgia (Ga. Code Ann. § 27-5-4 *et seq.*), Iowa (Iowa Code Ann. § 717F.1 *et seq.*), Kentucky (Ky. Admin. Regs. Tit. 301, Ch. 2, § 082), Louisiana (La. Admin. Code. Tit. 76, § 115), Maine (09-137 CMR Ch. 7, § 7.30 *et seq.*), Maryland (Md. Code Ann., Criminal Law § 10-621), Massachusetts (321 CMR § 2.12), Minnesota (Minn. Stat. Ann. § 346.155), Montana (Mont. Admin. R. § 12-6-2201 *et seq.*), New Hampshire (N.H. Code Admin. R. Fis. § 804.05), New Jersey (N.J. Admin. Code § 7:25-4.8 *et seq.*), New York (N.Y. Cons. L. Env. § 11-0512), Oregon (Or. Rev. Stat. 609.305 *et seq.*), Pennsylvania (Pa. Code Tit. 58 §137.1), Tennessee (Tenn. Code Ann. § 70-4-401 *et seq.*), Utah (Ut. Admin Code R657-3-24), Vermont (Vt. Stat. Ann. § 10-4709), and Washington (Wa. Rev. Code § 16.30.005 *et seq.*). Note that even states that prohibit pet ownership of chimpanzees often allow ownership for commercial purposes, such as entertainment or exhibition, which may provide owners with the incentive to exploit this species. Alabama, Alaska, Arkansas, Delaware, Hawaii, Idaho, Illinois, Indiana, Kansas, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Virginia, West Virginia, Wisconsin, and Wyoming do not explicitly prohibit pet ownership of chimpanzees.

chimpanzees, while others do not regulate possession at all. Even those states that have banned the possession of chimpanzees for personal use often exempt individuals who owned a chimpanzee prior to enactment of the ban. Unfortunately, the exact number of pet chimpanzees in the U.S. is unknown, as such use is largely unregulated. Further, because captive chimpanzees in the U.S. have no protection under the Endangered Species Act, interstate commerce in captive chimpanzees is legal, and, therefore, there is significant trade of the species in this country. In fact, current market price for a young chimpanzee is \$45,000 – \$65,000.²⁷

As mentioned above, infants are targeted for the pet trade because they are small and affectionate (a chimpanzee is physically dependent on its mother for at least the first four years of life, and remains in very close contact for much of this time). Thus, in order to make these infants available for sale, breeders must separate them from their mothers long before the natural age of weaning, a process that is traumatic for both mother and child.²⁸

According to Stephen Ross, Chair of the AZA Chimpanzee Species Survival Plan, it is not uncommon for breeders to remove an infant chimpanzee from his or her mother after only a few days “to be hand-reared, which serves the twin purposes of preparing the young chimpanzee for a life unnaturally close to humans and more quickly readying the mother for another birth.” (Declaration of Stephen Ross at ¶ 9; see also Declarations of Patti Ragan at ¶ 5; Jennifer Feuerstein at ¶ 6; and Peregrine Lee Wolff at ¶8).

An infant who is taken away from his or her mother may bond closely with a human caretaker, a characteristic often deemed attractive in companion animals. (As discussed above, it is these same characteristics that are exploited by the media for entertainment purposes, thereby creating an unrealistic view in the lay public of the healthy behavior of an adult chimpanzee and enhancing the desire of people to obtain a pet chimpanzee. Further, individuals who acquire chimpanzees as pets often venture into the lucrative entertainment business, blurring the line between these categories of ownership.)

As chimpanzees begin to reach puberty, around 6-8 years of age in captivity, they start growing dramatically in size (adults usually weigh between 75-150

²⁷ Rich Schapiro, *All it takes is \$45,000 and a phone call to get a pet chimp*, N.Y. DAILY NEWS (February 22, 2009). See also Declaration of Stephen Ross at ¶ 9.

²⁸ See, e.g., G.A. Bradshaw et al., *Developmental Context Effects on Bicultural Post-Trauma Self Repair in Chimpanzees*, DEVELOPMENTAL PSYCHOLOGY vol. 45, no.5, 1376-1388 (2009).

pounds), as seen in the pictures below, and develop inherent behaviors adapted to a life in the wild, such as displays of aggression.



These pictures illustrate the difference in size between the pale-faced juveniles used in entertainment and desired as pets and full-grown female (left) and male (right) adult chimpanzees.

In the wild, it is very common for chimpanzees to bite each other, but this action is obviously frowned upon by human owners, who sometimes remove a chimpanzee's canine teeth in an effort to make the individual less dangerous.²⁹ As Dr. Goodall further explains:

Juvenile and adolescent chimpanzees may throw violent tantrums and bite, often injuring humans in the process. Then, if they are kept, they must spend more and more time locked up. If these pets are kept until they are older, an attack may be so violent that the chimpanzee may be killed [to protect humans].

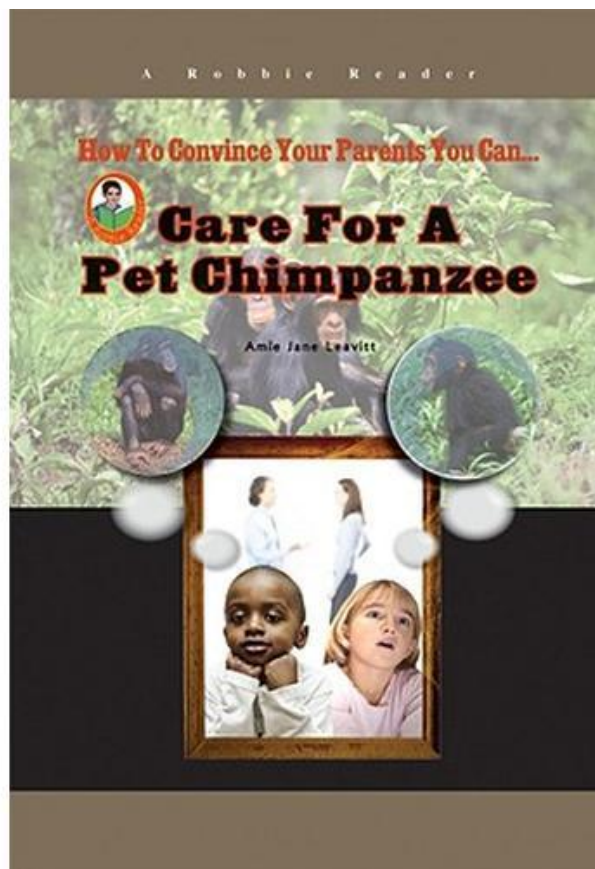
(Declaration of Jane Goodall at ¶ 9).

A chimpanzee's natural behavior is completely unmanageable by nearly all pet owners, as chimpanzees are about five times stronger than adult humans.³⁰ In addition, chimpanzees are a wild species, unlike most pets which are domesticated

²⁹ JANE GOODALL, *THROUGH A WINDOW*, 222 (1990).

³⁰ See, e.g., Alan Walker, *The Strength of Great Apes and the Speed of Humans*, *CURRENT ANTHROPOLOGY* vol. 50, no. 2, 229-234 (2009).

species bred over millennia to reduce their aggression towards humans.³¹ These common behaviors of chimpanzees are often undisclosed until the media reports a problem, such as when a chimpanzee escapes or attacks a person, at which point natural aggression may be viewed erroneously as aberrant. Despite these numerous reasons why chimpanzees do not make good pets, American media continues to encourage people to own this species; in addition to the entertainment examples noted above, there is even a children’s book – entitled “How to Convince Your Parents You Can... Care For a Pet Chimpanzee” (by Amie Jane Leavitt, 2007) – enticing the next generation of pet owners. This children’s book is readily available on the internet, and on the first page states “Chimps. You’ve seen them in movies . . . I’m sure you’ve thought at least once about getting a chimpanzee as your very own pet. Haven’t you? If you’re like most kids, and adults too for that matter, the answer is most definitely yes! Who wouldn’t want a pet chimp, anyway?” (Emphasis added).



³¹ Scientifically, chimpanzees are not domesticated animals, such as dogs and livestock, which have been bred over time to control their stress levels and thus reduce their aggression towards humans. Instead, chimpanzees maintain their wild tendencies, which include violent attacks on rival adults and aggressive play behavior. Brian Hare & Vanessa Woods, *The Science Behind Why Chimps Are Not Pets*, PBS, *The Human Spark* (March 6, 2009).

Because all chimpanzees eventually grow up and become stronger and more aggressive, the pet trade of chimpanzees in the U.S. has resulted in a large number of chimpanzees abandoned by their owners. Finding a home for such individuals is exceedingly difficult, especially given the behavioral problems of these chimpanzees who are hand-reared by humans and therefore do not develop species-typical behaviors essential to life in a chimpanzee social group.³²

Furthermore, in addition to the potential for danger to the public, the AZA opposes keeping primates, including chimpanzees, as pets because such ownership poses a risk to public health from zoonotic diseases; pet primates are often maintained in inadequate housing and without consideration for their social and psychological needs; there is an adverse impact on wild populations through the smuggling and import of primates that ultimately end up in the pet trade; and pet primates are unable to contribute genetically to those conservation programs in which they are needed due to their isolation from the managed population and also in many cases to deficits in their social skills related to their rearing and maintenance in isolation from other nonhuman primates.³³

The following examples show that many pet chimpanzee situations end in disaster for both humans and chimpanzees. It is important to note that even when no humans are harmed by a chimpanzee, this type of private ownership has adverse welfare impacts on the pet chimpanzee, as these individuals usually live alone or in pairs, not in social groups, and are prevented from developing species-typical behaviors.³⁴

- **Sandra Herold and Travis**

In February 2009, Stamford, Connecticut police shot and killed a 14 year-old, 200 pound chimpanzee (“Travis”) after he brutally mauled his owner’s friend. Travis, who was purchased from a breeder in Missouri and had appeared in television commercials (including for Old Navy and Coca-Cola) and posed for photographs at his owner’s towing shop, used his owner’s keys to let himself out of the house and proceeded to attempt to enter cars parked outside. After giving him tea laced with an anti-anxiety medication, Travis’ owner still could not lure him

³² See e.g., John Christoffersen, *Owners struggle to find sanctuaries for chimps*, MSNBC (May 14, 2009); Monica Hortobagyi, *People who own chimps rethink choice of pet*, USA TODAY (May 6, 2009). See also Declarations of Patti Ragan, Jennifer Feuerstein, and Peregrine Lee Wolff.

³³ Association of Zoos and Aquariums, Primate Advisory Group, *Primate Pet Trade Position Statement*.

³⁴ See, e.g., G.A. Bradshaw et al., *supra* note 28.

back inside, so she called a friend for assistance. When the friend arrived, Travis attacked her, tearing at her face and causing injuries (pictured below, right) so severe that many of the hospital staff that initially treated her later sought counseling. Travis' owner attempted unsuccessfully to stop the mauling by repeatedly stabbing her pet with a butcher knife, and, when the police arrived, they shot and killed Travis.³⁵ This sad incident is now the subject of multiple lawsuits with damages estimated in the hundreds of millions of dollars. Coincidentally, Travis' mother, Suzy, met the same fate eight years earlier after escaping from the Chimp Party breeding facility in Festus, Missouri when a neighbor shot her to death.³⁶



- **St. James Davis and Moe**

St. James Davis, a California resident, brought a wild chimpanzee home from Tanzania in 1967. He and his wife kept the chimpanzee at their home until 1999 when they were forced to surrender their pet because he had bitten a woman and a police officer in separate incidents. The chimpanzee, named Moe, went to a private facility (Animal Haven Ranch) where several other pet and entertainment chimpanzees lived. In 2005, on Moe's 40th birthday, the Davises went to visit him;

³⁵ Andy Newman, *Pet Chimp Is Killed After Mauling Woman*, N.Y. TIMES, at A30 (February 17, 2009); Anahad O'Connor, *Woman Mauled by Chimp Has Surgery, and Her Vital Signs Improve*, N.Y. TIMES (February 19, 2009).

³⁶ Wm. Stage, *Going Ape: Suzy the Chimp is dead, her teenage killer faces charges and there's bad blood all around*, RIVERFRONT TIMES (June 27, 2001).

when they entered the facility, two other chimpanzees escaped from their enclosure, brutally attacking Mr. Davis, who suffered from a severely mauled face (pictured below), genitals, and limbs. As the chimpanzees dragged his mutilated body down the road, one of the facility's workers shot and killed the chimpanzees.³⁷



- **Michael Jackson, Bubbles & Max**

Perhaps the most famous example of a pet chimpanzee, Bubbles was kept by the celebrity Michael Jackson (below, right) in his home from 1985-2002, at which point he became too aggressive and was given away to entertainment trainer Bob Dunn. Bubbles even went on tour with Jackson in Japan in 1987. Jackson also had a pet chimpanzee named Max. In 1992, Jackson traveled to Côte d'Ivoire and Gabon with a chimpanzee, popularizing this trend all over the world (below, left).³⁸

³⁷ See Rich Schapiro, *St. James, LaDonna, and Little Moe: The Worst Story I Ever Heard*, ESQUIRE (April 2009). Interestingly, Moe was not harmed in the 2005 incident, but was moved to another facility (Jungle Exotics) where he escaped in June 2008 and has not been seen since (it is presumed that Moe likely could not survive for very long in the San Bernadino forest adjacent to the facility).

³⁸ Jon James, *Michael Jackson's Chim*, BBC (July 2009).



- **Jeanne Rizzotto, Connor & Kramer** (brothers of Travis).

Ms. Rizzotto is currently facing charges of creating a public nuisance when her two chimpanzees (pictured below) allegedly escaped from their enclosure and bit a woman.³⁹



- **Judie Harrison, Mikey & Louie**

Judie Harrison relinquished two juvenile chimpanzees (age 5 and 6, pictured below) to the Little Rock Zoo in 2008. Fortunately the zoo was able to provide space for the young chimpanzees who had not yet reached adolescence and so were more easily adapted into an existing social group.⁴⁰

³⁹ Amanda Venegas, *MT chimps under quarantine*, KTVQ (March 28, 2009).

⁴⁰ Hortobagyi, *supra* note 32.



- **Brent Daniel Hudson**

After escaping from Mr. Hudson’s Missouri facility, a pet chimpanzee was shot to death by police, who received a call that the animal was running down a state highway, in March 2009.⁴¹

- **Carmen and Christi Presti, Charlie & Kiko “the Karate Chimps”**

These chimpanzees are kept at the Presti’s home, but are also used commercially for television appearances and karate demonstrations (as pictured below).⁴²

⁴¹ United Press International, *Chimp Shot and Killed After Escape*, MISSOURI POST DISPATCH (April 2, 2009).

⁴²Carmen Presti, *Charlie the Karate Chimp*, available at <http://www.thekaratechimp.com/charlie.htm> (2003). [See Appendix G]



- **Russ Cochran, Sammy & Buckwheat**

After a 19 year-old chimpanzee, Sammy, attacked Cochran's younger chimpanzee, Buckwheat, Buckwheat was sent to a facility in Texas. Despite the fact that Sammy bit off the tip of Cochran's finger a decade ago, this chimpanzee remains in Cochran's possession.⁴³

- **Dan Westfelt, Cheeta & Jeeter**

Cheeta (pictured below) is one of the most well-known privately owned chimpanzees in the U.S. – while rumors that Cheeta starred in the original Tarzan movies have been dispelled, he is one of the older chimpanzees living in captivity.⁴⁴



⁴³ Christoffersen, *supra* note 32.

⁴⁴ R.D. Rosen, *Lie of the Jungle*, WASH. POST (December 7, 2008).

- **Henry**

A 23 year old chimpanzee, Henry (pictured below, left), was rescued by the Houston SPCA in 2008 after 15 years of living in squalid conditions (pictured below, right) at a house in Crosby, Texas. Henry was severely emaciated and suffered from an esophageal ulcer and poor bone density.⁴⁵



3. Chimpanzees In Biomedical Research Laboratories

While the exploitation of chimpanzees as pets and for entertainment purposes is well known, many people are surprised to learn that over 1,000 chimpanzees are kept captive in biomedical research laboratories in this country. Most of these chimpanzees are languishing in barren cages year after year, while the small percentage who are used in research protocols are subjected to harmful invasive techniques. This type of exploitation, though less public, also has negative impacts on both individual chimpanzees and the species as a whole. It is because captive chimpanzees in the U.S. are not afforded the Endangered Species Act's protection from "take" that this situation continues.

Since the late 1990s, the use of chimpanzees in biomedical research worldwide has decreased dramatically; today the United States stands alone as the only nation actively engaged in biomedical research on our closest living relatives.

⁴⁵ Chimp Haven, *Henry's Home*, News Headlines (February 23, 2009).

For example, the United Kingdom banned experiments on great apes in 1997; Sweden followed suit in 2003, the Netherlands in 2004, and Austria in 2006. Chimpanzees have not been used for research in Germany, Italy, and Norway for over 15 years, and Belgium has severely restricted such use. In 2008, the European Commission introduced legislation to prohibit the use of great apes in biomedical research, and, in May 2009, the European Parliament endorsed a similar ban. Neither Australia nor New Zealand allows invasive research on chimpanzees. Even Japan, which continued to import wild chimpanzees for research long after the United States prohibited that destructive practice, discontinued biomedical research on the species in 2006.⁴⁶

In sharp contrast to all other developed countries, there are currently approximately 1,020 chimpanzees in biomedical research labs in the United States; about 500 are owned by the federal government, and the others are owned by private commercial interests or state universities (See Table 2, below, and Appendix H).

Table 2 – Facilities currently holding chimpanzees for biomedical research purposes.

Name of Facility	Number of chimpanzees
New Iberia Research Center (LA)	~330
Alamogordo Primate Center (NM)	~230
Southwest National Primate Research Center (TX)	~165
MD Anderson Cancer Center (TX)	~180
Yerkes National Primate Research Center (GA)	~95
Bioqual (MD)	~15
Food and Drug Administration (MD)	~5
Total	~1,020

⁴⁶ Andrew Knight, *The beginning of the end for chimpanzee experiments?*, PHILOSOPHY, ETHICS, AND HUMANITIES IN MEDICINE vol. 3, no. 16 (2008).

The vast majority (>80%) of these chimpanzees are not being used in research protocols, either because they are deemed ineligible for future testing or because they are simply being warehoused for unidentified potential future use. (See Declaration of Theodora Capaldo at ¶ 5). Those who are being used in research protocols are primarily used either to model human disease (*i.e.*, act as a surrogate human so scientists can observe how a disease progresses in an infected individual) or to test the efficacy and toxicity of new drugs or vaccines before those compounds are tested on humans.⁴⁷ Chimpanzees used in these research protocols are usually isolated in individual cages measuring only 5 ft x 5 ft x 7 ft with no opportunity for social or outdoor activity,⁴⁸ are frequently anesthetized using a dart gun, and are subjected to invasive techniques.⁴⁹ This solitary confinement and frequent assault causes severe stress to this highly social and cognitive species.

Dr. Theodora Capaldo, a licensed psychologist who has studied chimpanzees held in captivity in biomedical laboratories, has found:

Nearly all of those now in laboratories have endured repeated assault by laboratory technicians administering anesthesia with a dart gun, called a “knock down.” Clinical records indicate that a chimpanzee held for decades in a lab has suffered as many as three or four

⁴⁷ The efficacy of these studies has been called into question. Even though chimpanzees and humans share nearly all of their DNA, their genomes are widely divergent when it comes to immunology; because of these differences, infectious diseases often have dissimilar impacts on each species. For example, chimpanzees intentionally infected with HIV almost never develop AIDS, and those infected with the Hepatitis C virus show significantly lower levels of chronic infection, liver cirrhosis and liver cancer. For further discussion of the historic uses of chimpanzees in biomedical research, the impacts such studies have had on human medicine, and a discussion of alternatives, see Kathleen M. Conlee, *Chimpanzees in research and testing worldwide: Overview, oversight and applicable laws*, JAPANESE SOCIETY FOR ALTERNATIVES TO ANIMAL EXPERIMENTS, AATEX 14, 111-118 (2008); Kathleen M. Conlee & Sarah T. Boysen, *Chimpanzees in Research: Past, Present, and Future*, in THE STATE OF THE ANIMALS III, 119-137 (2005); Jarrod Bailey, *A Brief Introduction to Human/Chimpanzee Biological Differences, Their Negative Impact on Research into Human Conditions, and Scientific Methods for Better and More Humane Research* (2007); Andrew Knight, *The Poor Contribution of Chimpanzee Experiments to Biomedical Progress*, J. OF APPLIED ANIMAL WELFARE SCIENCE vol. 10, no. 4, 281–308 (2007); Jarrod Bailey et al., *Chimpanzee Research: An Examination of Its Contribution to Biomedical Knowledge and Efficacy in Combating Human Diseases* (2007); The Chimpanzee Sequencing and Analysis Consortium, Initial sequence of the chimpanzee genome and comparison with the human genome, *Nature* vol. 437, 69-87 (September 1, 2005); Jarrod Bailey, *An Assessment of the Role of Chimpanzees in AIDS Vaccine Research*, ALTERNATIVES TO LABORATORY ANIMALS vol. 36, 381-428 (2008); Jarrod Bailey, *An Examination of Chimpanzee Use in Human Cancer Research*, ALTERNATIVES TO LABORATORY ANIMALS vol. 37, 399-416 (2009).

⁴⁸ 9 C.F.R. §§ 3.80, 3.81.

⁴⁹ Information on NIH grants involving chimpanzees is stored in the Research Portfolio Online Reporting Tool (RePORT) database, available at <http://projectreporter.nih.gov/reporter.cfm>.

hundred such knock downs. The stress, panic and terror they experience during one of these “standard procedures” is enormous – a chimpanzee will scream, shake, defecate and urinate in fear and try, hopelessly, to avoid the dart. Historically, often several darts are administered by a group of technicians surrounding the cage to administer the necessary dose to finally bring the chimpanzee down. Chimpanzees in laboratories thus live in a state of constant fear (as evidenced by the frequent displays of males even though time and experience have shown them that they are powerless to avoid this procedure). . . . Thus we have seen chimpanzees in a constant state of hypervigilance, self-mutilating in a manner similar to humans who report persistent and unrelieved anxieties. . . . [Further], laboratory chimpanzees are known to suffer from dissociative and attachment disorders and even complex post-traumatic stress disorder commonly seen in human soldiers, victims of sexual or physical abuse, and refugees.

(Declaration of Theodora Capaldo at ¶ 8, 10) (emphasis added)).



This chimpanzee (“Pepper”) was subjected to biomedical research for 27 years before moving to a sanctuary in Canada. During her time at the Buckshire Corporation and the Laboratory for

Experimental Medicine and Surgery in Primates (LEMSIP), Pepper experienced 307 knockdowns, 36 punch liver biopsies, 1 open wedge liver biopsy, 6 cervical biopsies, 10 lymph node biopsies, and 4 bone marrow biopsies. (Photograph by Fauna Foundation)

In addition to living under inherently stressful conditions,⁵⁰ chimpanzees in biomedical research laboratories are also often inhumanely treated. For example, the Coulston Foundation, which once housed over 600 chimpanzees, was closed in 2002 following numerous violations of the Animal Welfare Act, including negligent deaths of chimpanzees, failure to appropriately handle sedated chimpanzees, and failure to provide adequate veterinary care for chimpanzees. Today, such inhumane treatment continues at the New Iberia Research Center in Louisiana (among other facilities), where a recent nine-month undercover investigation conducted by The Humane Society of the United States revealed over one hundred potential violations of the Animal Welfare Act regarding chimpanzees, including distress caused by lack of enrichment and socialization,⁵¹ distress caused by maternal deprivation and injury caused by sedation methods, inadequate veterinary care, and unsanitary conditions.⁵² (See Appendix H for more information on the Coulston Foundation, the New Iberia Research Center, and other research facilities that are known to inhumanely treat chimpanzees).

Thus, biomedical research on chimpanzees, facilitated by the split-listing of the species, does not provide for conservation of the species, as required by the ESA; instead, the lack of protection of captive chimpanzees has led to institutionalized abuse of this imperiled species. It is clear that exploitation of this species for biomedical purposes has not positively benefitted chimpanzees in captivity or in the wild; in addition to resulting in mistreatment of individual chimpanzees, such use actively undermines chimpanzee conservation, as discussed below and in Section III(B)(5).

⁵⁰ See, e.g., G.A. Bradshaw et al., *Building an Inner Sanctuary: Complex PTSD in Chimpanzees*, J. OF TRAUMA AND DISSOCIATION vol. 9, no. 1, 9-34 (2008).

⁵¹ The Animal Welfare Act (7 U.S.C. § 2131 *et seq.*) requires laboratories to provide “a physical environment adequate to promote the psychological well-being of primates.” (See Public Law 99-198). However, the USDA has issued regulations that permit each regulated entity to develop its own “appropriate plan for environmental enhancement adequate to promote the psychological well-being of nonhuman primates . . . in accordance with currently accepted professional standards as cited in appropriate professional journals or reference guides,” (9 C.F.R. § 3.81(a)) and the regulations allow individual chimpanzees to be exempted from the enrichment plan “for scientific reasons set forth in the research proposal.” (9 C.F.R. § 3.81(e)). Thus, the laboratory setting is often antithetical to the species-typical behavior chimpanzees exhibit in healthy social groups. See also *Animal Legal Defense Fund v. Glickman*, 204 F.3d 229 (D.C. Cir. 2000) (upholding the agency’s regulations).

⁵² A U.S. Department of Agriculture investigation into these allegations was ongoing at the time this petition was submitted.

Biomedical research is related to other forms of exploitation of chimpanzees in the U.S., as one chimpanzee may encounter all three forms of captive exploitation in his or her lifetime. Laboratories are permitted to acquire chimpanzees who were born outside of research facilities, because the split-listing of the species does not prohibit interstate commerce between private owners. There are many chimpanzees who, after they are too powerful to safely handle, have been sold or abandoned by pet and entertainment owners to biomedical laboratories – for example, Butch and Chipper, two chimpanzees who performed in the Ringling Bros. circus for ten years, were later sold to a biomedical laboratory in New Mexico. (See Appendix H). Similarly, chimpanzees have been sold by laboratories to other private owners – for example, before the Coulston Foundation closed, the laboratory sold several young chimpanzees into entertainment, including Arthur and Phoenix, two infants sold to the owner of a minor league baseball team for use in promotional events. (See Appendix H). In this way, all of these forms of private ownership reinforce each other, and such trade in the U.S. sends a message to the world that buying and selling this endangered species is entirely appropriate.

Improperly managed breeding of laboratory chimpanzees also undermines domestic conservation efforts, such as the captive propagation by the SSP, as the genetic integrity of these chimpanzees has not been maintained.⁵³ Indeed, according to the federal government, in the early 1990s when scientists thought that the chimpanzee would be a good model for HIV/AIDS research, laboratories rapidly bred the species with little regard for genetic diversity, resulting in a so-called “surplus” of chimpanzees being maintained in biomedical research laboratories.⁵⁴ Due to the large number of chimpanzees resulting from this frivolous breeding,⁵⁵ beginning in 1995, the National Institutes of Health (NIH)

⁵³ From an initial breeding group of 315 males and females in 1986, the NIH sponsored breeding program resulted in a total population of 1,800 chimpanzees in 1993. NATIONAL RESEARCH COUNCIL, CHIMPANZEES IN RESEARCH, at 7 (1997); Conlee & Boysen, *supra* note 47 (citing M. Stephens, *Chimpanzees in laboratories: Distribution and types of research*, ALTERNATIVES TO LABORATORY ANIMALS vol. 23, 579-583 (1995)).

⁵⁴ The National Research Council published its report “Chimpanzees in Research” in 1997(*supra* note 53), announcing the “surplus” and thereby confusing the public as to the imperiled conservation status of this species. The “surplus” also indicates systemic mismanagement of the research population – there were an estimated 1,800 chimpanzees in biomedical research facilities in the United States in 1993, many of them languishing in cages, without companionship, and without being used for research. Conlee & Boysen, *supra* note 47.

⁵⁵ Each chimpanzee costs about \$15 - \$30 per day to house in a biomedical research facility; given that the chimpanzee lifespan often exceeds 50 years, this adds up to about \$275,000 - \$550,000 per chimpanzee. Thus, to house 1,000 chimpanzees in biomedical laboratories for 50 years would cost the federal government hundreds of millions of dollars. NATIONAL RESEARCH COUNCIL, *supra* note 53.

issued a moratorium on breeding chimpanzees the federal government owns or financially supports.⁵⁶

Furthermore, as explained by world-renowned chimpanzee experts, subjecting this highly cognitive species to invasive biomedical research promotes disrespect for the species, which undermines conservation efforts by reinforcing negative attitudes towards chimpanzees. For example, Dr. Wrangham believes that “the most egregious welfare issues regarding treatment of captive chimpanzees concern those held in biomedical research laboratories.” (Declaration of Richard Wrangham at ¶ 12).

This experimentation, when our closest living relatives are often treated as nothing more than inconveniently strong and potentially aggressive guinea pigs, certainly does not foster respect for the chimpanzee species and as such does not promote conservation.

(Declaration of Jane Goodall at ¶ 13).

The fact that the [National Research Council in 1997] publicly announced that there was a “surplus” of chimpanzees in the U.S., thereby misleading the public on the conservation status of this species, is indicative of the fact that the biomedical industry does not promote chimpanzee conservation.

(Declaration of Brian Hare at ¶ 12).

[C]aptive exploitation of chimpanzees also negatively impacts the survival of the species as a whole, because exploitation of this species . . . promotes disrespect and a utilitarian rather than protective attitude for this extremely intelligent primate which in the wild is on the brink of extinction. To save this species from extinction, it is imperative that we generate and maintain a global

⁵⁶ The moratorium on breeding of federally-owned and supported chimpanzees was made permanent in May 2007. NATIONAL CENTER FOR RESEARCH RESOURCES, CHIMPANZEE MANAGEMENT PLAN WORKING GROUP REPORT (May 2007). Despite the lack of federal funding for chimpanzee breeding, private funds have been used to support the practice, and some facilities have openly flouted the moratorium. (For example, since 1995, about 200 infant chimpanzees have been born at the New Iberia Research Center, which receives tens of millions of dollars in federal funding [See Appendix H]).

commitment to developing an understanding of and reverence for this species, and to eliminating any and all threats to its survival, including captive exploitation.

(Declaration of Theodora Capaldo at ¶ 9).

B. Threats to Wild Chimpanzee Populations Have Only Increased Since the “Split-Listing” of the Species

Harmonizing the ESA status of the captive and wild members of this species is particularly important in light of the fact that in the twenty years since the Service established the split-listing approach, the species has further declined in the wild. Moreover, as the world’s leading experts explain, allowing the blatant commercial exploitation of the captive members of the species has contributed, and will continue to contribute, to this decline.

The Endangered Species Act requires the Service to list a species as either “endangered” or “threatened” based on the following factors: 1) the present or threatened destruction, modification, or curtailment of its habitat or range; 2) overutilization for commercial, recreational, scientific, or educational purposes; 3) disease or predation; 4) the inadequacy of existing regulatory mechanisms; and 5) “other natural or manmade factors affecting its continued existence.” (16 U.S.C. § 1533(a)(1)(A-E)).

Since 1990 when the Fish and Wildlife Service established the split-listing scheme for chimpanzees, scientists have made significant developments in understanding this species, including its phylogeny, behavior, biology, and ecology, and the factors contributing to the species’ decline, especially those caused by human action. Unfortunately, in the last twenty years, the threats to wild chimpanzee populations have not subsided, and extinction appears more imminent for *Pan troglodytes*. According to Dr. Jane Goodall, “chimpanzees are increasingly critically endangered . . . [and] could become all but extinct within our children’s lifetimes.” (Declaration of Jane Goodall at ¶ 6). Furthermore, evidence described in the previous section and below, shows that the exploitation of chimpanzees in the U.S. – facilitated by the split-listing of the species – contributes to the endangerment of wild populations.

1. Population Numbers

Populations of chimpanzees represent four recognized subspecies: West African (*Pan troglodytes verus*); Nigerian/Cameroonian (*P. t. vellerosus*); Central

African (*P. t. troglodytes*); and East African (*P. t. schweinfurthii*).⁵⁷ Genetic evidence suggests that the West African subspecies split from the Central African subspecies approximately 420,000 years ago, with later differentiation between the Central and Eastern lineages and within the western subspecies.⁵⁸ At the time of the last ESA listing decision in 1990, there were only three recognized subspecies (*P. t. verus*, *troglodytes*, and *schweinfurthii*); the discovery of a genetic divergence of *Pan troglodytes* within western Africa led to the recognition of a fourth subspecies (*P. t. vellerosus*), meaning that chimpanzee populations are even more fragmented than originally thought. The geographic distribution of these subspecies is depicted in Figure 1, below.

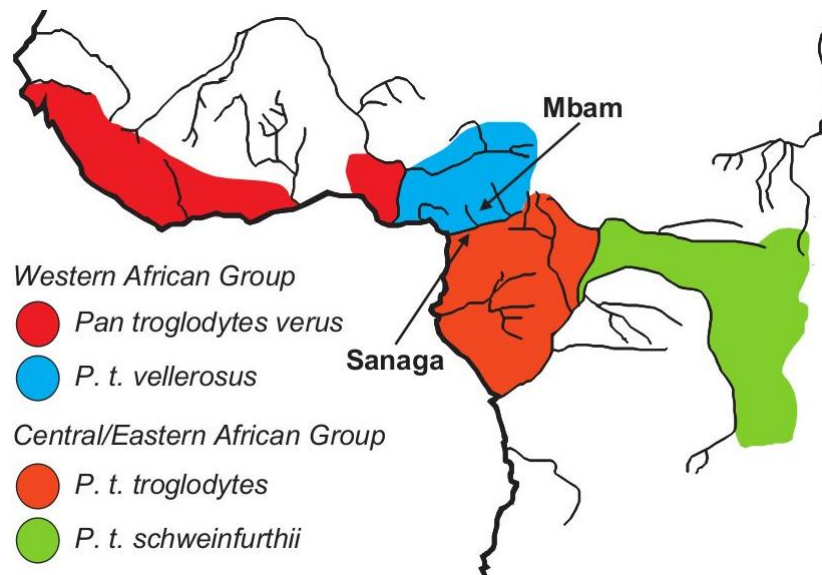


Figure 1 - Map of chimpanzee subspecies distribution (Vellerosus Network). Note that populations are dispersed in small patches throughout these ranges.

Unfortunately, all of these subspecies' populations are in decline, which puts the entire species at great risk of extinction. In fact, in the last thirty years, the chimpanzee population is estimated to have fallen by 66 percent, with the decrease

⁵⁷ See Celine Becquet et al., *Genetic Structure of Chimpanzee Populations*, PLOS GENET vol. 3, issue 4, 617 (2007); Mary Katherine Gonder et al., *New Genetic Evidence on the Evolution of Chimpanzee Populations and Implications for Taxonomy*, INT'L J. OF PRIMATOLOGY vol. 27, no. 4, 1103-1127 (August 2006). See also John F. Oates et al., *The type locality of Pan troglodytes vellerosus (Gray, 1862), and implications for the nomenclature of West African chimpanzees*, PRIMATES vol. 50, no. 1, 78-80 (2009) (suggesting that, because of historical information regarding the location of the first specimen of this subspecies collected, the correct name for *P. t. vellerosus* is *P. t. ellioti*).

⁵⁸ See Yong-Jin Won & Jody Hey, *Divergence Population Genetics of Chimpanzees*, MOLECULAR BIOLOGY AND EVOLUTION vol. 22, no.2, 297-307 (2005).

in the West African subspecies being most dramatic (for example, down 90 percent in the last 20 years in Côte d'Ivoire).⁵⁹ In 2008, finding that the chimpanzee has experienced a significant population reduction in the past 20-30 years (one generation) and that such reductions could continue for 30-40 years, the International Union for Conservation of Nature and Natural Resources (IUCN) again listed the chimpanzee – both wild and captive individuals of the species – as endangered due to the major threats of habitat loss, poaching, and disease.⁶⁰

According to the IUCN, the following numbers of chimpanzees persist in their native habitats today (See Appendix A for the IUCN Species Profile and distribution map):

⁵⁹ See Rebecca Kormos & Christophe Boesch, *Regional Action Plan for the Conservation of Chimpanzees in West Africa*, IUCN Primate Specialist Group (2003); Genevieve Campbell et al., *Alarming decline of West African chimpanzees in Côte d'Ivoire*, CURRENT BIOLOGY vol. 18, issue 19, R903-R904 (2008); John F. Oates, *Is the Chimpanzee, Pan troglodytes, an endangered species? It depends on what "endangered" means*, PRIMATES vol. 47, no. 1, 102-112 (2006); Peter D. Walsh, et al., *Catastrophic ape decline in western equatorial Africa*, NATURE vol. 422, 611-614 (April 10, 2003); Elizabeth Greengrass, *Chimpanzees Are Close to Extinction in Southwest Nigeria*, PRIMATE CONSERVATION vol. 24 (2009).

⁶⁰ The IUCN is a neutral forum for governments, non-governmental organizations, scientists, businesses and local communities to find pragmatic solutions to conservation and development challenges. As a leading authority on the environment and sustainable development, the IUCN has over 1,000 member organizations, including governments and non-governmental organizations. The IUCN first recognized *Pan troglodytes* as endangered in 1996; due to its continually declining populations, the species has retained this listing status following several assessments since that date. John F. Oates et al., IUCN Red List of Threatened Species: *Pan troglodytes* (2008) (available at <http://www.iucnredlist.org/details/15933/0>). See also Caroline Tutin et al., *Regional Action Plan for the Conservation of Chimpanzees and Gorillas in Western Equatorial Africa*, IUCN Primate Specialist Group (2005); Rebecca Kormos et al., *Status Survey and Conservation Action Plan: West African Chimpanzees*, IUCN Primate Specialist Group (2003); Kormos & Boesch, *supra* note 59.

Table 3 - Chimpanzee distribution and population size

Subspecies	Range Countries	Population Size
<i>Pan troglodytes verus</i> [West African]	Senegal, Guinea, Sierra Leone, Liberia, Côte d'Ivoire, Burkina Faso, Ghana, Nigeria	21,000—55,000
<i>Pan troglodytes vellerosus</i> [Nigerian/Cameroonian]	Nigeria, Cameroon	Less than 6,500
<i>Pan troglodytes troglodytes</i> [Central African]	Cameroon, Equatorial Guinea, Gabon, Congo, Central African Republic, Democratic Republic of the Congo	70,000—115,000
<i>Pan troglodytes schweinfurthii</i> [East African]	Central African Republic, Democratic Republic of the Congo, Sudan, Uganda, Rwanda, Burundi, Tanzania	75,000—125,000
		Total ~175,000—300,000

There has long been uncertainty as to the total number of living chimpanzees. In 1990 the Service recognized that the numbers of chimpanzees of the subspecies *P. t. troglodytes* and *P. t. schweinfurthii* are “highly speculative and based on the probably incorrect assumption that many uninvestigated areas still contain suitable habitat and are occupied at potential carrying capacity.”⁶¹ More recent data make clear that the current “increase [of the population estimate] comes about from new survey data, rather than representing a measured increase in actual population numbers.”⁶² Thus, while the estimated total population sizes reported in this petition and relied upon in the 1990 listing may not be substantially different, it is clear that all chimpanzee subspecies continue to be in

⁶¹ 55 Fed. Reg. 9129 at 9133. The FWS total population estimate in 1990 ranged from 102,000—232,000 chimpanzees.

⁶² Oates, *Is the chimpanzee, Pan troglodytes, an endangered species?*, *supra* note 59.

decline and are at greater risk of extinction today than they were twenty years ago. (See Appendix A).

Experts who participate in long-term studies of the species, including Ian Redmond (the Chief Consultant for the United Nations Great Apes Survival Project (GRASP) Partnership), Jane Goodall, and Richard Wrangham, agree that chimpanzees are closer to extinction after twenty years of the split-listing:

While census data on chimpanzee populations across their range are incomplete, from those recently surveyed, it is clear that most if not all populations have declined substantially . . . If unchecked, these threats [to the species] will lead to extinction of wild chimpanzees across most of their range in the first quarter of this century.

(Declaration of Ian Redmond at ¶ 5).

It is absolutely clear that chimpanzees are at greater risk of extinction today than they were in 1990 . . . At the turn of the last century, it is estimated that there were between one and two million chimpanzees living in the wild. Today it is estimated that there are only between 172,000 and 300,000 chimpanzees living in increasingly fragmented populations in 21 countries across Equatorial Africa, with 95% of the remaining populations being found in only 10 of these 21 countries.

(Declaration of Jane Goodall at ¶ 6).

There is no doubt that chimpanzee populations in Africa are at greater risk of extinction today than they were in 1990, when the wild population was first listed as endangered. While the estimated total population size has not dramatically changed, this is due to the inadequacy of census data, and should not be interpreted to mean that the threats this species faces have been alleviated. On the contrary, all of those threats have greatly intensified during the last nineteen years, and today we are losing chimpanzees at an extremely fast rate.

(Declaration of Richard Wrangham at ¶ 5; see also Declarations of Brian Hare and Deborah Cox).

2. Habitat Loss

Chimpanzees are found in Africa's equatorial forest belt, primarily in rain forest ecosystems, but also in secondary re-growth forests, open woodlands, bamboo forests, swamp forests, and savanna with bands of riverine forests.⁶³

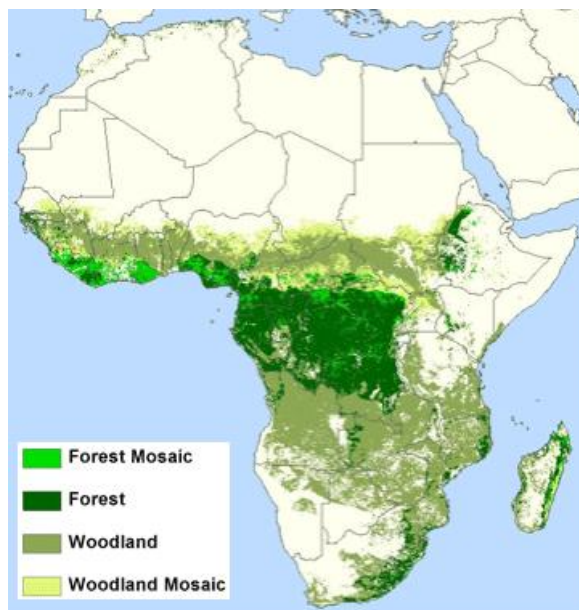


Figure 2 - Map of African forest cover (Oak Ridge National Laboratory, 2000)

They feed primarily on the fruits, nuts, seeds, blossoms, and leaves of the trees in these forest ecosystems, but also eat insects and tubers and hunt small mammals.⁶⁴ Chimpanzees live in communities of 20-150 individuals, but split into smaller parties for social purposes, traveling distances of 2-4 km per day on average (home range size can be anywhere from 5 to 40 km², depending on the density of forest in the ecosystem inhabited).⁶⁵ When they reach sexual maturity around age 12,

⁶³ JULIAN OLIVER CALDECOTT & LERA MILES, *WORLD ATLAS OF GREAT APES AND THEIR CONSERVATION*, 44 (2005). *See also* Jill D. Pruetz & Paco Bertolani, *Savanna Chimpanzees, Pan troglodytes verus, Hunt with Tools*, *CURRENT BIOLOGY* vol. 17, issue 5, 412-417 (March 6, 2007); JANE GOODALL, *THE CHIMPANZEES OF GOMBE* (1986).

⁶⁴ David P. Watts & John C. Mitani, *Hunting Behavior of Chimpanzees at Ngogo, Kibale National Park, Uganda*, *INT'L J. OF PRIMATOLOGY* vol. 23 no. 1 (2002); R. Adriana Hernandez-Aguilar et al., *Savanna chimpanzees use tools to harvest the underground storage organs of plants*, *PROCEEDINGS OF THE NAT'L ACAD. OF SCIENCES* vol. 104, no. 49, 19210-19213 (December 4, 2007); Pruetz & Bertolani, *supra* note 63; GOODALL, *supra* note 63.

⁶⁵ *See* Anne E. Pusey et al., *The Contribution of Long-Term Research at Gombe National Park to Chimpanzee Conservation*, *CONSERVATION BIOLOGY* vol. 21, no.3, 623-634 (2007); Julia Lehmann & Christophe Boesch, *To fission or to fusion: effects of community size on wild chimpanzee* (Pan

female chimpanzees disperse, migrating through the forest into other communities.⁶⁶ This omnivorous, slow breeding, and complexly social species relies on large, intact, healthy forest ecosystems for survival, making chimpanzees vulnerable to damage to these resources, such as that caused by logging, mining, and human encroachment.

According to the United Nations, Africa lost 64 million hectares (over 247,000 square miles) of forest between 1990 and 2005; almost half of this deforestation occurred in chimpanzee range countries.⁶⁷ In 2005, most of the wood removed from forests in chimpanzee range countries was for fuel purposes, but industrial logging continues to have a major role, especially in Cameroon, Congo, and Gabon.⁶⁸ Whether forests are cleared for timber or energy resources, or for conversion to agricultural land, the result is less viable habitat for chimpanzees. Even when such uses do not result in complete deforestation, the modification of primary forest habitat, such as that from road building for resource access, still has a dramatic effect on this endangered species.

troglodytes verus) *social organisation*, BEHAVIORAL ECOLOGY AND SOCIOBIOLOGY vol. 56, no. 3, 207-216 (July 2004); Carson M. Murray et al., *Dominance rank influences female space use in wild chimpanzees*, Pan troglodytes: *towards an ideal despotic distribution*, ANIMAL BEHAVIOUR vol. 74, issue 6, 1795-1804 (December 2007); Julia Lehman & Christophe Boesch, *Social influences on ranging patterns among chimpanzees (Pan troglodytes verus) in the Tai National Park, Côte d'Ivoire*, BEHAVIORAL ECOLOGY vol. 14, no. 5, 642-649 (2003).

⁶⁶ GOODALL, *supra* note 63.

⁶⁷ United Nations Food and Agriculture Organization, *Global Forest Resource Assessment 2005*. Chimpanzee range countries with the greatest loss in forest cover between 1990 and 2005 include The Democratic Republic of the Congo (~6.9 million hectares), Nigeria (~6.1 million hectares), and Cameroon (~3.3 million hectares).

⁶⁸ *Id.*

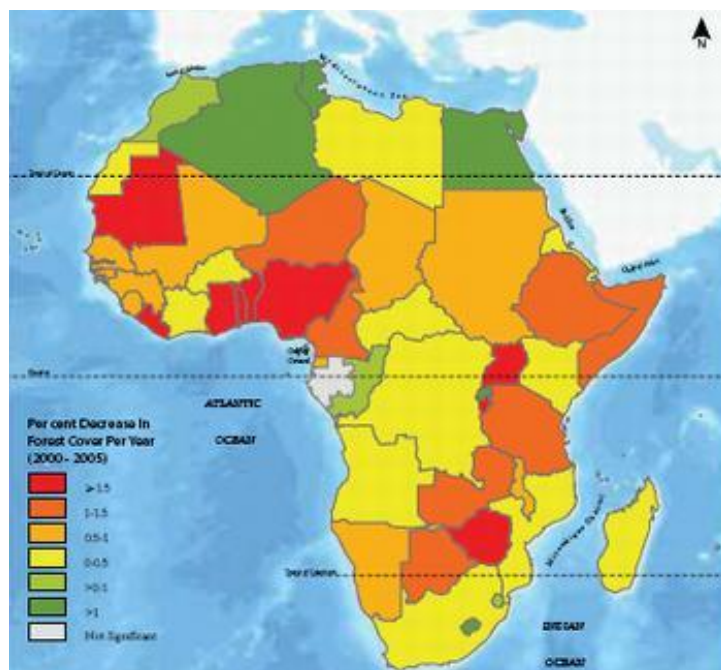


Figure 3 - Map showing rate of decrease in African forest, 2000-2005 (United Nations Environment Programme)

While forest management plans have been developed in the last twenty years, a lack of capacity and funding often leaves them unenforced and illegal logging remains a huge problem.⁶⁹ Although management of timber resources is improving, demand for African timber continues to increase, further threatening forests, including those that are established preserves.⁷⁰ In 2005 alone, over 40 million cubic meters of industrial roundwood was removed from forests in chimpanzee range countries.⁷¹ Today, in addition to increasing deforestation rates in West Africa (see Figure 3, above), a new timber frontier has opened in the Congo River Basin (see Figure 4, below), with Cameroon and Gabon supplying the most volume for export.⁷² This region is a habitat stronghold for *Pan troglodytes troglodytes*, *Pan troglodytes vellerosus*, and *Pan troglodytes schweinfurthii* – Gabon, Cameroon, and

⁶⁹ See R. Nasi et al., *Forest management in Central Africa: where are we?*, INT'L FORESTRY REVIEW vol. 8, no.1, 14-20 (2006). See also World Wildlife Fund, *Failing the Forests: Europe's illegal timber trade* (2005).

⁷⁰ Nasi et al., *supra* note 69.

⁷¹ United Nations Food and Agriculture Organization, *supra* note 67, at Chart 17. Nigeria had the most (13.9 million), then Uganda (4.4 million), then The Democratic Republic of the Congo (4.1 million), then Gabon (3.6 million).

⁷² See Nadine T. Laporte et al., *Expansion of Industrial Logging in Central Africa*, SCIENCE vol. 316, 1451 (2007); The Congo Basin Forest Partnership, *The Forests of the Congo Basin, State of the Forest 2006*. See also Colin A. Chapman et al., *Long-Term Effects of Logging on African Primate Communities: a 28-year Comparison from Kibale National Park, Uganda*, CONSERVATION BIOLOGY vol. 14, issue 1, 207-217 (2000).

the Democratic Republic of the Congo have the largest chimpanzee populations of any range countries (~27,000; 31,000; and 70,000, respectively).⁷³ Unfortunately, preservation laws often go unenforced, and an estimated 50 percent of the timber exports from Cameroon, Congo, Equatorial Guinea, and Gabon are illegally derived.⁷⁴ Further depletion of the habitat in this region, which contains some of the largest intact forests in the world, could have devastating effects on this endangered species.



Figure 4 – Map showing the forests of the Congo River Basin

While chimpanzees may be able to adapt to minor forest degradation,⁷⁵ the indirect effects of logging often have more detrimental impacts on chimpanzee

⁷³ Thomas M. Butynski, *The Robust Chimpanzee Pan troglodytes: Taxonomy, Distribution, Abundance, and Conservation Status*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, at 8 (Rebecca Kormos et al. eds., 2003). The next three largest populations are in Congo (10,000), Guinea (8,100), and Côte d'Ivoire (8,000). The forests in this region are so dense, having one of the lowest human populations of any tropical forest area, and chimpanzees who have likely never interacted with humans have been discovered in Congo. Dave Morgan & Crickette Sanz, *Naïve Encounters with Chimpanzees in the Goulougo Triangle, Republic of Congo*, INT'L J. OF PRIMATOLOGY vol. 24, no. 2, 369-381 (2003).

⁷⁴ R. Nasi et al., *supra* note 69. Not only has Gabon recently (2002) set aside significant areas of land for conservation (13 new national parks), the Democratic Republic of the Congo has cancelled logging contracts in an effort to clean up its forest sector and reduce unsustainable logging. The Congo Basin Forest Partnership, *supra* note 72, at pg 31, 49.

⁷⁵ According to the IUCN “logging generally, but not always, has a negative impact on chimpanzee density due to habitat alteration (removal of important food trees) and disturbance.” Andrew J. Plumptre & Andrew Grieser Johns, *Changes in Primate Communities Following Logging Disturbance*, in THE CUTTING EDGE: CONSERVING WILDLIFE IN LOGGED TROPICAL FOREST (Robert A. Fimbel et al., eds., 2002); Lee J.T. White & Caroline E.G. Tutin, *Why Chimpanzees and Gorillas Respond Differently to Logging*, in AFRICAN RAIN FOREST ECOLOGY, at 449 (William Weber et al., eds., 2001).

survival. The sheer noise associated with industrial logging activities can be enough to cause a chimpanzee community to relocate, often putting them in conflict with a neighboring community (chimpanzee or human).⁷⁶ More importantly, the roads that are built to access timber stands and other resources have an adverse effect on chimpanzee communities – road construction causes fragmentation of the forest, inhibiting chimpanzees from their normal movement for feeding and reproductive behaviors.⁷⁷ In Central Africa alone, between 1976 and 2003 there were 51,916 kilometers (>32,000 miles) of new logging roads constructed.⁷⁸ Once roads are built, previously inaccessible areas of forest can be easily reached, which increases chimpanzee/human interaction, often to the detriment of the chimpanzee (for example, increased poaching and disease communication, discussed below). Thus, logging in Africa’s tropical forests is inextricably related to the other threats to the chimpanzee species.

Unfortunately, industrial logging is not the only pressure on Africa’s tropical forests; as mentioned above, wood removal for local energy needs often markedly outpaces timber removal.⁷⁹ As human populations, especially in West Africa, dramatically expand (around Taï National Park in Côte d’Ivoire, human population density around the preserve has grown from 1.3 people/km² in 1971 to 135 people/km² in the 1990s⁸⁰), demand for energy increases. Not only is timber harvested for use as firewood, tree stands are also burned to produce charcoal, another source of energy for both rural and urban Africans.⁸¹ These practices are often unregulated, and result in significant damage to forest resources and chimpanzee habitat.⁸²

Once indigenous trees are removed for either timber export or local energy purposes, the cleared area is often converted to agricultural land. As human populations rapidly expand, the need for more arable land increases, often at the

⁷⁶ See e.g., Marc P.E. Parren & Dirck Byler, *Logging in West Africa: Impacts on Chimpanzees*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 133-143 (Rebecca Kormos et al. eds., 2003); J.M. Williams et al., *Causes of Death in the Kasekela Chimpanzees of Gombe National Park, Tanzania*, AM. J. OF PRIMATOLOGY vol. 70, 766-777 (2008).

⁷⁷ Parren & Byler, *supra* note 76; Andrew J. Plumptre et al., *The Status of Chimpanzees in Uganda*, ALBERTINE RIFT TECHNICAL REPORT SERIES no. 2 (2003); The Congo Basin Forest Partnership, *supra* note 72.

⁷⁸ Laporte et al., *supra* note 72.

⁷⁹ United Nations Food and Agriculture Organization, *supra* note 67, at Chart 17.

⁸⁰ Ilka Herbinger et al., *Côte d’Ivoire*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 99-109 (Rebecca Kormos et al. eds., 2003).

⁸¹ See, e.g., Philippe Girard, *Charcoal production and use in Africa: what future?*, UNASYLVA 211, vol. 53, 30-35 (2002).

⁸² See Plumptre et al., *The Status of Chimpanzees in Uganda*, *supra* note 77; The Congo Basin Forest Partnership, *supra* note 72.

expense of forests that have traditionally provided chimpanzee habitat.⁸³ In addition to forests being cleared for subsistence use, commercial palm oil plantations are expanding in Central Africa, turning forests into uninhabitable monocultures.⁸⁴ As forests are changed into agricultural land, chimpanzees are put in direct conflict with humans – for example, with compromised habitat, chimpanzees are more likely to raid agricultural crops, which causes humans to attempt to kill these “pests,” as discussed below.

Destructive mining practices also result in chimpanzee habitat loss, whether they are on a commercial or artisanal scale.⁸⁵ Mining in forest interiors also brings humans into close contact with wildlife, and is directly connected to the bushmeat crisis, discussed further below. For example, in 2000, there was a dramatic increase in global demand for columbite-tantalite (or “coltan”), a material widely used in consumer electronic products such as cell phones. This led to a mining rush, especially in the Democratic Republic of the Congo, which has 80 percent of the world’s coltan deposits, much of which is in conservation preserves that were partially cleared, often in violation of preservation laws, to provide better access to the ore. As local families moved in to take advantage of this valuable resource, they subsisted on bushmeat including chimpanzees, gorillas, and elephants.⁸⁶

Similarly, in 2001, Ghana’s government decided to permit foreign companies to mine gold in forest reserves; the surface mining practices not only cause deforestation, but also result in cyanide spills that pollute streams and groundwater, leading to displacement of local agricultural land, which, in turn can lead to further conversion of forest for agricultural use.⁸⁷ As humans unsustainably extract mineral resources from tropical Africa, chimpanzee habitat continues to

⁸³ Parren & Byler, *supra* note 76; Chris Duvall, *Agriculture and Chimpanzee Survival in West Africa*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 143-145 (Rebecca Kormos et al. eds., 2003). For example, in parts of West Africa, between 1985 and 1998, areal expansion of agricultural land exceeded 39 percent.

⁸⁴ Palm oil is the leading vegetable oil worldwide, and has decimated the rainforests of Indonesia, particularly in Borneo and Sumatra. Africans have relied on palm oil for local use for thousands of years, but recently foreign investors have looked to the dense forests of Central Africa to expand their production. See Emily B. Fitzherbert et al., *How will oil palm expansion affect biodiversity?*, TRENDS IN ECOLOGY AND EVOLUTION vol. 23 no. 10, 538-545 (2008).

⁸⁵ See e.g., Fenda A. Akiwumi & David R. Butler, *Mining and environmental change in Sierra Leone, West Africa: a remote sensing and hydrogeomorphological study*, ENVTL. MONITORING AND ASSESSMENT vol. 142, no. 1-3, 309-318 (2008).

⁸⁶ United Nations Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (2001); Karen Hayes & Richard Burge, *Coltan Mining in the Democratic Republic of Congo: How tantalum-using industries can commit to the reconstruction of the DRC*, Flora & Fauna International (2003).

⁸⁷ Gavin Hilson & Frank Nyame, *Gold mining in Ghana’s forest reserves: a report on the current debate*, AREA vol. 38, issue 2, 175-185 (2006).

degrade.

3. Disease

Chimpanzees across their range are threatened by parasitical, bacterial, and viral infections: in East Africa, *Pan troglodytes schweinfurthii* is at risk from respiratory illnesses, polio, and simian immunodeficiency virus; in West Africa *Pan troglodytes verus* is susceptible to measles; and in Central Africa *Pan troglodytes troglodytes* suffers from both Ebola and anthrax infection.⁸⁸ As chimpanzees are extremely social, and individuals cement their bonds through mutual grooming, contagious diseases have the potential to spread rapidly through a chimpanzee community.⁸⁹ Recent evidence shows that non-invasive studies on these wild populations can not only provide for conservation by developing an understanding of how chimpanzee populations are impacted by disease, but may also tangentially benefit human medicine.⁹⁰

⁸⁸ See J.M. Williams et al., *Causes of Death in the Kasekela Chimpanzees of Gombe National Park, Tanzania*, AM. J. OF PRIMATOLOGY vol. 70, 766-777 (2008); Fabian H. Leendertz et al., *Anthrax in Western and Central African Great Apes*, AM. J. OF PRIMATOLOGY vol. 68, 928-933 (2006); Pierre Formenty et al., *Infectious Diseases in West Africa: A Common Threat to Chimpanzees and Humans*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 169-174 (Rebecca Kormos et al. eds., 2003); Peter D. Walsh et al., *Catastrophic ape decline in western equatorial Africa*, NATURE vol. 422, 611-614 (April 10, 2001); Brandon F. Keele et al., *Increased mortality and AIDS-like immunopathology in wild chimpanzees infected with SIVcpz*, NATURE vol. 460, 515-519 (July 23, 2009).

⁸⁹ Disease transfer between humans and chimpanzees is relatively common. However, because the genetic difference between humans and chimpanzees is significant in the immune response areas, as discussed above, it is difficult to predict the effect a disease will have in each species. For example, although biomedical researchers once hailed the chimpanzee as a model for AIDS research, of the 200 chimpanzees deliberately infected with HIV, only one developed symptoms similar to human AIDS patients; for the simple reason of speciation, the human immunodeficiency virus does not reproduce well in the chimpanzee so the disease does not spread (the virus remains in the blood cells, unlike in humans where it moves to plasma and spinal fluid). Instead of developing the classic changes to the central nervous system that humans with full-blown AIDS do, chimpanzees only have flu-like symptoms from HIV. Ray Greek et al., *A Scientific Case for the Elimination of Chimpanzees in Research* (2005). Thus, our close genetic relationship means that the precaution of segregating chimpanzee and human populations (for example by establishing protected habitat areas and by requiring tourists to take precautions to limit the spread of disease) is appropriate, while relying on chimpanzees as a model for human disease is often inappropriate (See Section III(A)(3), above). See also Sophie Kondgen et al., *Pandemic Human Viruses Cause Decline of Endangered Great Apes*, Current Biology vol. 18, 260-264 (Feb. 26, 2008).

⁹⁰ See, e.g., Keele et al., *supra* note 88. This ground-breaking study used non-invasive methods, including urine and fecal samples, as well as necropsy to track the progression of this disease. If not for the well-established behavioral research, which allowed individuals to be clearly identified, this study would not have been possible.

4. **Overutilization of Wild Chimpanzees for Commercial and Recreational Purposes**

In addition to habitat loss and disease, human exploitation of wild chimpanzees for commercial and recreational purposes severely threatens chimpanzee survival. Poaching and trafficking of chimpanzees continues at unsustainable levels, fueled by trade in the species for bushmeat and for pet or entertainment purposes. This cycle is explained by Dr. Goodall:

Adult chimpanzees are killed for the illegal commercial bushmeat trade (including for use in “traditional” medicines). There is little meat on an infant, so these are seized from their dead mothers’ arms and are dragged into a harsh and bitter new life in the pet and entertainment trades. In some markets, poachers can make money selling these live infants, and in this way the demand for pet and entertainment chimpanzees fuels further poaching.

(Declaration of Jane Goodall at ¶ 6; see also Declarations of Richard Wrangham, Deborah Cox, Brian Hare, and Ian Redmond).

a. Poaching for Bushmeat

The bushmeat crisis is widely recognized as one of the greatest threats to chimpanzee survival (See Appendix A, D; Declarations of Jane Goodall, Richard Wrangham, Brian Hare, Ian Redmond, and Deborah Cox). Not only are chimpanzees hunted for consumption, but many of the animals with which they share the forests are similarly pursued, putting the chimpanzee at both direct and indirect risk of harm.⁹¹ While the practice of eating African wildlife dates back thousands of years and may once have been sustainable, the use of modern weapons, combined with exploding human population growth and new access to previously impenetrable forests, has turned it into a commercial industry with devastating results.⁹²

⁹¹ In order to address the bushmeat crisis, the parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora put together a working group (Decision 11.166) consisting of West and Central African nations. The working group led to a Convention Resolution (13.11) which provides that all parties should “prohibit the offtake of Appendix-I species [including chimpanzees] for consumption as food.”

⁹² See Elizabeth L. Bennett et al., *Hunting for Consensus: Reconciling Bushmeat Harvest, Conservation, and Development Policy in West and Central Africa*, CONSERVATION BIOLOGY, vol. 21,



Figure 5 - An adult male chimpanzee partially butchered for the bushmeat trade in Cameroon (photograph by the Last Great Ape Organization).

In some areas of Africa consumption of chimpanzees is taboo, in others it is a customary method of obtaining subsistence protein, and in still others, mostly urban areas, there is a growing demand for this “delicacy.”⁹³ Although chimpanzee meat is not the most common type of bushmeat (antelope species are most often targeted), the species is particularly affected by hunting as chimpanzees reproduce very slowly – females reach maturity around age 12 and give birth about every five

no. 3, 884-887 (2006); Rebecca Kormos et al., *Bushmeat Hunting as a Threat to Chimpanzees in West Africa*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 151-155 (Rebecca Kormos et al. eds., 2003); DALE PETERSON & KARL AMMANN, *EATING APES* (2003); Evan Bowen-Jones, *A Review of the Commercial Bushmeat Trade with Emphasis on Central/West Africa and the Great Apes*, Report for the Ape Alliance (1998); R. Nasi et al., *Conservation and use of wildlife-based resources: the bushmeat crisis*, Secretariat of the Convention on Biological Diversity and Center for International Forestry Research, Technical Series no. 33 (2008).

⁹³ See Kormos et al., *Bushmeat Hunting as a Threat to Chimpanzees in West Africa*, *supra* note 92; Kim Hill et al., *Mortality rates among wild chimpanzees*, *J. OF HUMAN EVOLUTION* vol. 40, issue 5, 437-450 (2001); David S. Wilkie & Julia F. Carpenter, *Bushmeat hunting in the Congo Basin: an assessment of impacts and options for mitigation*, *BIODIVERSITY AND CONSERVATION* vol. 8, no. 7, 927-955 (1999); JULIAN OLIVER CALDECOTT & LERA MILES, *WORLD ATLAS OF GREAT APES AND THEIR CONSERVATION* (2005).

years – in a lifetime, each mother only raises, on average, two to three offspring to maturity, due to high infant mortality rates.⁹⁴

It is difficult to quantify the impact of bushmeat hunting on chimpanzee populations, as the meat is often eaten shortly after it is obtained. One study found that 293 chimpanzees were killed for bushmeat in Congo Brazzaville in a single year; thus, it is likely that the bushmeat crisis is responsible for the deaths of tens of thousands of chimpanzees since 1990, when the listing of the species was last addressed.⁹⁵ These numbers appear to be increasing, as bushmeat is no longer only for local consumption but is a burgeoning commercial enterprise, especially among the urban elite.⁹⁶ In addition to being available in Africa, chimpanzee meat is sold internationally, including in the United States, on the black market.⁹⁷

Not only are chimpanzees specifically targeted by hunters, there are many other animals that share their habitat that local people depend on for food, such as forest antelopes. These animals are often indiscriminately hunted, using wire snares or metal traps which can kill or maim chimpanzees as well.⁹⁸ When a chimpanzee gets caught in a snare, it usually results in permanent damage to a limb or even lethal infection; however, demonstrating their intelligence, there have been instances of chimpanzees removing snares from other individuals in their community.⁹⁹

⁹⁴ Kormos et al., *Bushmeat Hunting as a Threat to Chimpanzees in West Africa*, *supra* note 92.

⁹⁵ Bowen-Jones, *supra* note 92.

⁹⁶ See, e.g., DALE PETERSON & KARL AMMAN, *EATING APES* (2003).

⁹⁷ Chimpanzee meat has been found in markets from Brussels to London to New York to Chicago. For example, in 1999 there was a raid on African food shops in Brussels that found chimpanzee carcasses waiting to be served. In London, chimpanzee bushmeat is a delicacy that can sell for \$560 per kilogram. See Susan Brown, *The west develops a taste for bushmeat*, *NEW SCIENTIST* issue 2559 (July 8, 2006); Annamarie Cumiskey & Richard Woods, *Chimps on the menu in Brussels restaurants*, *THE SUNDAY TIMES* (May 16, 1999). See also, Jonathan Mummolo, *Monkey Meat is Confiscated at Dulles*, *THE WASH. POST*, at B03 (December 9, 2008).

⁹⁸ John C. Waller & Vernon Reynolds, *Limb Injuries Resulting from Snares and Traps in Chimpanzees (Pan troglodytes schweinfurthii) of the Budongo Forest, Uganda*, *PRIMATES* vol. 42, no. 2, 135-139 (2001); Andrew J. Plumptre et al., *The Status of Chimpanzees in Uganda*, *ALBERTINE RIFT TECHNICAL REPORT SERIES* no. 2 (2003).

⁹⁹ Stephen Amati et al., *Snare removal by a chimpanzee of the Sonso community, Budongo Forest (Uganda)*, *PAN AFR. NEWS* vol. 15, no. 1, 6-8 (June 2008).

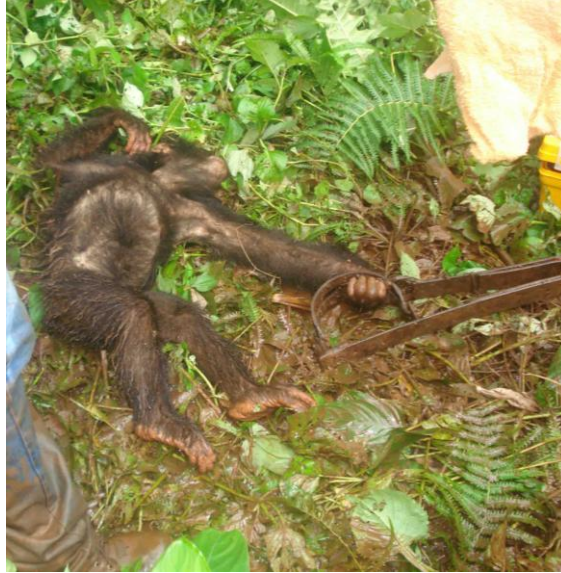


Figure 6 - A chimpanzee caught in a trap in Uganda. (Photograph courtesy of Deborah Cox, JGI)

The bushmeat crisis has been exacerbated by resource extraction practices, such as logging, as discussed above. Once roads are built to reach timber stands, formerly remote chimpanzee habitat becomes accessible, making it easier for hunters to get into the forests, and facilitating the transport of large animals out of the forest.¹⁰⁰

The process normally follows a well-defined pattern: hunting camps supplied with guns and often staffed by men and women with ties to urban retailers proliferate, allowing easier access to wildlife as well as access to free transportation of meat on logging trucks. Often, these camps operate near logging operations and are staffed by timber employees seeking to maximize both revenue sources. Likewise, timber companies profit from paying lower wages since hunting provides greater earning power for employees.¹⁰¹

¹⁰⁰ See Caroline Tutin et al., *Regional Action Plan for the Conservation of Chimpanzees and Gorillas in Western Equatorial Africa*, IUCN Primate Specialist Group (2005). It is important to note that the hunting facilitated by increased forest access also is related to the emergence of infectious diseases in humans that handle and consume bushmeat. See Nathan D. Wolfe et al., *Bushmeat Hunting, Deforestation, and Prediction of Zoonotic Disease Emergence*, *Emerging Infectious Diseases* vol. 11, no. 12, 1822-1827 (2005).

¹⁰¹ Marc P.E. Parren & Dirck Byler, *Logging in West Africa: Impacts on Chimpanzees*, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 138-139 (Rebecca Kormos et al. eds., 2003).

As illegal logging proliferates, chimpanzees are increasingly at threat from poaching. Similarly, civil unrest in tropical Africa contributes to an increase in bushmeat hunting, as rebel groups operating under the cover of dense forests take advantage of local food sources and finance their activities through bushmeat trade.¹⁰²

Bushmeat butchering and consumption is also directly related to the communication of disease. Not only does zoonotic disease transfer adversely affect chimpanzees, but it also harms humans. For example, the emergence of the AIDS pandemic is considered to be directly related to blood contact between a human hunter and a chimpanzee carrying simian immunodeficiency virus.¹⁰³ In addition, Ebola hemorrhagic fever is spreading through ape populations in Gabon and Congo, and human hunters are susceptible to this deadly disease as well.¹⁰⁴

b. Poaching as Retribution for Crop Raiding

Chimpanzees are also killed as retribution for raiding agricultural crops. As forests are converted into agricultural land (discussed above in Subsection III(B)(2)), chimpanzees are forced to rely on the fruit and grain crops that have replaced their traditional food sources.¹⁰⁵ Whether humans rely on these crops for subsistence or for financial gain, they do not welcome agricultural “pests.” As humans encroach further on traditional chimpanzee habitat, the two species are pitted against each other, often having catastrophic results for the chimpanzee. For example, even on the edge of Gombe National Park in Tanzania, one of the most protected chimpanzee preserves, it appears that increasing agricultural activities have led to humans poisoning chimpanzees to deter them from crop raiding.¹⁰⁶

¹⁰² See, e.g., Dirk Draulans & Ellen Van Krunkelsven, *The impact of war on forest areas in the Democratic Republic of Congo*, ORYX vol. 36, no. 1, 35-40 (2002).

¹⁰³ The latest evidence indicates that the transfer and subsequent mutation of this virus first occurred in West or Central Africa. See Nancy Ross-Flanigan, *Chimps Yield New Clues to Origin of AIDS: Scientists can now test wild chimps for SIV without disturbing them*, HHMI BULLETIN, 4-5 (June 2002); Brandon F. Keele et al., *Chimpanzee Reservoirs of Pandemic and Nonpandemic HIV-1*, SCIENCE vol. 313 no. 5786, 523-526 (2006).

¹⁰⁴ Peter D. Walsh et al., *Catastrophic ape decline in western equatorial Africa*, NATURE vol. 422, 611-614 (April 10, 2001).

¹⁰⁵ Mnason Tweheyo et al., *Patterns of crop raiding by primates around the Budongo Forest Reserve, Uganda*, WILDLIFE BIOLOGY vol. 11, issue 3, 237-247 (2005); Lisa Naughton-Treves et al., *Temporal patterns of crop-raiding by primates: linking food availability in croplands and adjacent forest*, J. OF APPLIED ECOLOGY, vol. 35, issue 4, 596-606 (1998).

¹⁰⁶ Elizabeth Greengrass, *The sudden decline of a community of chimpanzees at Gombe National Park: a supplement*, PAN AFR. NEWS vol. 7, 25-26 (2000).



Figure 7 - These two young chimpanzees were burnt to death after a farmer in Uganda encircled them in a fire as retribution for crop raiding. (Photograph courtesy of Deborah Cox, JGI)

c. Illegal Trafficking of Live Chimpanzees

Inextricably linked to poaching, illegal trafficking of live chimpanzees, primarily for the pet and entertainment trades, which are perpetuated by the U.S. media portrayal of chimpanzees, is a major threat to the survival of the species. (See Appendix A, Declarations of Jane Goodall, Richard Wrangham, Brian Hare, Deborah Cox, and Ian Redmond). As the FWS acknowledged in 1990:

There has been an alarming recent trend towards killing adult females both for local use as meat and in order to secure their live offspring for export. Also, because entire family groups may have to be eliminated in order to secure one live infant, and since many of these infants perish during the process, it has been estimated that five to ten chimpanzees die for every one that is delivered alive to an overseas buyer.

(55 Fed. Reg. 9129 at 9133 (emphasis added)).

This practice of butchering adults (whose large size means more profits) for the bushmeat trade and selling orphaned chimpanzees, also seen as profitable commodities,¹⁰⁷ results in a dramatic decline of breeding females and juveniles of

¹⁰⁷ In some African range countries, such as Congo, the bushmeat trade appears to be the primary driver of this poaching, in other countries, such as Guinea, live capture of infants seems to be the primary goal. See Rebecca Kormos et al., *Status Survey and Conservation Action Plan: West African*

the next generation, and has caused catastrophic damage to chimpanzee populations in the last twenty years. Therefore, in order to prevent the extinction of *Pan troglodytes* it is essential that the demand for live chimpanzees is eliminated. (See Appendix A, D, F; Declarations of Jane Goodall, Richard Wrangham, Deborah Cox, Brian Hare, and Ian Redmond).



Figure 8 - Young chimpanzees confiscated from smugglers (photograph by Aly Wood-Shanks).

Though, historically, international trade in live chimpanzees was primarily for biomedical research purposes, because of waning global demand for chimpanzee research subjects and the ratification of CITES by all chimpanzee range countries (finalized in 1994), this market is no longer the largest threat to wild chimpanzees.¹⁰⁸ Today, illegal international trafficking of chimpanzees, primarily for the pet and entertainment trade, thrives. Indeed, Interpol estimates that the

Chimpanzees, IUCN Primate Specialist Group (2003); Rebecca Kormos & Christophe Boesch, *Regional Action Plan for the Conservation of Chimpanzees in West Africa*, IUCN Primate Specialist Group (2003); Caroline Tutin et al., *Regional Action Plan for the Conservation of Chimpanzees and Gorillas in Western Equatorial Africa*, IUCN Primate Specialist Group (2005).

¹⁰⁸ In the United States, private medical researchers imported chimpanzees from Africa as early as the 1920s, and the federal government became directly involved when, in the 1950s, the Air Force imported 65 chimpanzees to test the effects of the space program. Kathleen M. Conlee, *Chimpanzees in research and testing worldwide: Overview, oversight and applicable laws*, JAPANESE SOC'Y FOR ALTERNATIVES TO ANIMAL EXPERIMENTS, AATEX 14, 111-118 (2008). In fact, prior to CITES ratification, the United States was the world's biggest importer of live primates ("Jan Moor-Jankowski of LEMSIP was the last person representing an American laboratory to import chimpanzees from Africa when (with NIH funding) he acquired seventy-two of them from Franz Sitter in 1975." DALE PETERSON & JANE GOODALL, *VISIONS OF CALIBAN*, pg 104, 239 (2000)). In the last 25 years, the U.S. has not legally imported a single wild chimpanzee for scientific or medical purposes. (See CITES Trade Database Reports, Appendix F). Even after the U.S. stopped legally importing wild chimpanzees for biomedical research, several range countries, especially Côte d'Ivoire and Sierra Leone, continued to export chimpanzees in significant numbers. For example, in the 1980s, Sierra Leone exported 70 live, wild chimpanzees to CITES signatory countries for scientific and biomedical research purposes (50 to Japan, 20 to Austria). After ratifying CITES, not a single wild chimpanzee has been legally exported from Sierra Leone. (See CITES Trade Database Reports, Appendix F).

global illegal wildlife trade may be worth over \$20 billion annually.¹⁰⁹ This trade often proceeds on the same routes as that of illegal drugs and weapons, and is considered a security threat as it funds organized crime.¹¹⁰

The parties to CITES, including the U.S., have recognized that illegal trade has a significant effect on great apes, particularly juveniles. Thus, in 2004 the signatories adopted a resolution calling on parties to adopt comprehensive legislation to protect these species and to “limit the international use of great apes to nationally approved zoological institutions, educational centres, rescue centres, and captive breeding centres in accordance with CITES.”¹¹¹

Unfortunately, wild chimpanzees are captured and smuggled for sale as pets and for entertainment purposes both within and outside African range countries. There appears to be a growing trend of Africans keeping chimpanzees as pets, but expatriates seem to be the primary pet owners in chimpanzee range countries. Experts recognize that the illegal pet trade is a primary threat to chimpanzee survival in many countries, including Guinea, Sierra Leone, Liberia, Ghana, Nigeria, and The Democratic Republic of the Congo (See Figure 9, below).¹¹²

¹⁰⁹ Liana Sun Wyler & Pervaze A. Sheikh, *International Illegal Trade in Wildlife: Threats and U.S. Policy*, CRS Report for Congress, Order Code RL34395 (August 22, 2008).

¹¹⁰ *Id.* See also International Fund for Animal Welfare, *Killing with Keystrokes: An Investigation of the Illegal Wildlife Trade on the World Wide Web, 2008* (finding that illegal trade is exacerbated by the internet, with thousands of auctions in both live animals and wildlife products taking place each year).

¹¹¹ CITES Conference of the Parties Resolution 13.4 (2004).

¹¹² See Bernard Unti, *Chimpanzee Protection in Sierra Leone: A Law Enforcement and Legislative Review*, Chimpanzee Conservation and Sensitization Program (2006); Bernard Unti, *Chimpanzee Protection in the Republic of Guinea: A Law Enforcement and Legislative Review*, Chimpanzee Conservation and Sensitization Program (2006); Kormos et al., *Status Survey and Conservation Action Plan: West African Chimpanzees*, *supra* note 107; Andrew J. Plumptre et al., *The Status of Chimpanzees in Uganda*, ALBERTINE RIFT TECHNICAL REPORT SERIES no. 2 (2003); Asami Kabasawa, *Current State of the Chimpanzee Pet Trade in Sierra Leone*, AFR. STUDY MONOGRAPHS vol. 30, no. 1, 37-54, March 2009.



Figure 9 - In The Democratic Republic of the Congo, military commanders often trade chimpanzee infants as pets or trophies (photograph courtesy of J.A.C.K. Sanctuary)

This trade extends beyond Africa. For example, in 2005, six chimpanzees with an estimated black market value of about \$15,000 each were confiscated at an airport in Kenya. The chimpanzees were of Nigerian origin and were en route, in crowded unsanitary conditions, to Sudan; ultimately they were destined for Cairo, to be illegally imported by a notorious trafficker who reportedly smuggles between 50-100 chimpanzees per year out of the wild.¹¹³ In 2004, authorities rescued two chimpanzees who were smuggled from the wild into Turkey, where they were kept as pets and for entertainment on a tourist boat.¹¹⁴ In September of 2000, two infant chimpanzees were confiscated at the Doha, Qatar airport, believed to be from Nigeria and destined for a local pet shop.¹¹⁵ Sales from Africa to the U.S. have also been attempted. (See, e.g., Declaration of Ian Redmond at ¶ 8 – 10 (“I have personal knowledge of an attempt by a poacher in Cameroon to sell a captured chimpanzee to a U.S. buyer . . . it is very likely that the attempted sale of wild chimpanzees over the internet is motivated by the fact that it is legal to advertise chimpanzees for sale in the U.S.”)).

Infant chimpanzees smuggled from the wild are also exhibited in hotels and roadside shows in Africa, the Middle East, and Europe. For example, a famous resort visited by world dignitaries in Sharm El Sheik, Egypt has eleven

¹¹³ Karl Amman & Kristina Roic, *Law and Disorder*, Africa Geographic, 39-43 (November 2006).

¹¹⁴ These two chimpanzees now reside at a sanctuary in England (Monkey World Ape Rescue Center). See also Amberin Zaman, *Chimp Poachers Find Market in Turkey*, L.A. TIMES, at A-2 (October 3, 1998).

¹¹⁵ International Primate Protection League, *Two Chimpanzees Confiscated in Qatar*, NEWS vol. 27, no. 3, 18-19 (December 2000).

chimpanzees smuggled from the wild on display in substandard conditions.¹¹⁶ When tourists pay to see these chimpanzees on display, they provide financial support to further destructive poaching and trafficking.¹¹⁷



Figure 10 – Two young chimpanzees on display at the Hauza Hotel in Egypt; the hotel allows tourists to take a photograph with them for a fee. (A review of “breakfast with the chimps” at the Hauza Hotel can be found at <http://www.tripadvisor.com>.)

When chimpanzees are taken out of the wild and sold as pets or for entertainment, the species is adversely affected, as each individual of this endangered species represents an important genetic reservoir, and, as discussed above, live capture often results in the deaths of other chimpanzees in the community as well. (See Declarations of Jane Goodall, Richard Wrangham, Ian Redmond, Brian Hare, and Deborah Cox).

5. Inadequate Regulatory Mechanisms Including the “Split-Listing” Adversely Impact Chimpanzee Conservation.

There is no question that existing regulatory mechanisms are inadequate for protecting the chimpanzee. Chimpanzees, both captive and wild, have significant legal protection throughout African range countries, though there remain problems with enforcement. The United States, however, does not even provide legal protection under its cornerstone wildlife law, the Endangered Species Act, to captive chimpanzees living in the U.S., and, as this petition demonstrates and the world’s leading experts agree, that regulatory void facilitates exploitation that contributes to the endangerment of wild chimpanzees. (See, e.g., Declaration of Richard Wrangham at ¶ 13 (“The lack of protection for captive chimpanzees in the United

¹¹⁶ Amman & Roic, *supra* note 113.

¹¹⁷ See Janis Carter, Orphan Chimpanzees in West Africa: Experiences and Prospects for Viability in Chimpanzee Rehabilitation, in IUCN Status Survey and Conservation Action Plan: West African Chimpanzees, 157-168 (Rebecca Kormos et al. eds., 2003).

States sanctions and facilitates the deplorable exploitation of chimpanzees for commercial use. As a result, not only do hundreds of individual chimpanzees suffer, but conservation of the species as a whole is undermined.”)). If this species is to be saved from extinction, it will take a global commitment to ensuring that all members of the species are protected from harm and managed for the benefit of the species. (See Declarations of Jane Goodall, Richard Wrangham, Brian Hare, Ian Redmond, and Deborah Cox). Therefore, the Service’s split-listing rule for *Pan troglodytes* is an inadequate regulatory mechanism, and must be eliminated to provide for chimpanzee conservation.

CITES, which all chimpanzee range countries and the U.S. have ratified, strictly limits international trade in Appendix I species, including *Pan troglodytes*, and requires parties to “take appropriate measures to...prohibit trade in specimens,” including measures “to penalize trade...or possession...or both.”¹¹⁸ All chimpanzee range countries, with the exception of Equatorial Guinea, are also signatories to the African Convention on the Conservation of Nature and Natural Resources, which provides that “species in Class A shall be totally protected throughout the entire territory of the Contracting States; the hunting, killing, capture or collection of specimens shall be permitted only on the authorization in each case of the highest competent authority and only if required in the national interest or for scientific purposes.”¹¹⁹ *Pan troglodytes* is listed as a Class A species, and, thus, the signatories have committed themselves to protecting chimpanzees from unnecessary human use. Many range countries have followed these treaty directives to adopt national legislation, extending further protection to this species, both within and outside of preserved areas.¹²⁰ In addition, over 50 national parks in

¹¹⁸ CITES, March 3, 1973, art. VIII, 27 U.S.T. 1087, T.I.A.S. No. 8249 (the chimpanzee is listed as an Appendix I species, meaning that it is or may be threatened with extinction and affected by trade). See also CITES Conference of the Parties Resolution 13.4 (2004) (wherein signatories, including the U.S., pledged to adopt comprehensive legislation to protect these species and to “limit the international use of great apes to nationally approved zoological institutions, educational centres, rescue centres, and captive breeding centres in accordance with CITES”).

¹¹⁹ African Convention on the Conservation of Nature and Natural Resources Article VIII (1)(a) (1968).

¹²⁰ For example, in 2007 Sierra Leone passed a law that criminalizes the possession, capture, or killing of chimpanzees. REUTERS, *Sierra Leone bans capture, killing of chimps* (July 25, 2007). See Bernard Unti, *Chimpanzee Protection in Sierra Leone: A Law Enforcement and Legislative Review*, Chimpanzee Conservation and Sensitization Program (2006); Bernard Unti, *Chimpanzee Protection in the Republic of Guinea: A Law Enforcement and Legislative Review*, Chimpanzee Conservation and Sensitization Program (2006).

Africa are inhabited by chimpanzees,¹²¹ many of which have recently been established.¹²²

However, at the same time that African range countries continue to enact numerous layers of legal protection for chimpanzees, the U.S., despite its pledges in the international arena,¹²³ has neglected to fully protect captive chimpanzees under federal law. On the contrary, as discussed in Section III(A), the split-listing has facilitated rampant exploitation of chimpanzees in the U.S., for use as pets and for entertainment and biomedical research purposes. Thus, although in 1990 the Service stated that there was “no evidence that the different treatment of [captive and wild] populations [under the ESA] was in any way responsible for the population decline [of chimpanzees in the wild],” (55 Fed. Reg. at 9131), today there is substantial evidence that this exploitation of captive chimpanzees undermines efforts to conserve this species in the wild by fueling poaching and trafficking, negatively impacting conservation attitudes, and complicating the politics of chimpanzee conservation. The U.S. should be a model in the field of conservation, but in the case of chimpanzees it has adopted a “do what I say but not what I do” position.

Far from setting an international example of how to treat this species under national law, the U.S.’s split-listing approach for *Pan troglodytes* openly permits the commercial exploitation of chimpanzees. Chimpanzees are frequently used in American media, depicted as frivolous clowns for human amusement. In addition, many Americans legally own chimpanzees as pets, and such use is also openly broadcasted. As discussed in the previous section, the media exploitation of chimpanzees not only misleads viewers into thinking the species is well protected and reinforces negative conservation attitudes, but by predominantly featuring infants it creates a public misperception regarding chimpanzee biology, thereby encouraging ownership of this species as a pet. U.S. exploitation of chimpanzees for

¹²¹ John F. Oates, *Is the Chimpanzee, Pan troglodytes, an endangered species? It depends on what “endangered” means*, PRIMATES vol. 47, no. 1, 102-112 (2006).

¹²² For example, in 2002, Gabon established thirteen new national parks, eleven of which provide habitat for chimpanzees. *Id.*

¹²³ Section 2(a)(4) of the ESA recognizes that “the United States has pledged itself as a sovereign state in the international community to conserve” listed species. One such international agreement is the Kinshasa Declaration, which was a product of an Intergovernmental Meeting on Great Apes, hosted by the Great Apes Survival Project (GRASP), a conservation partnership of the United Nations Environment Programme (UNEP) and the United Nations Educational, Scientific, and Cultural Organization (UNESCO). On September 9, 2005, the United States signed the Kinshasa Declaration, “pledg[ing] to do everything in [its] power to ensure the long-term future for all great-ape species and to encourage the citizens of the world, in whatever capacity, to assist and support this initiative.” [See Appendix J] In order to fulfill this international commitment, and implement the purpose of the ESA, the U.S. must afford full protection to great apes within its jurisdiction.

pets and entertainment has a global audience, and these images impact African viewers in the same way they impact American viewers.

Dr. Hare has personal knowledge of the effects of depictions of entertainment chimpanzees:

In my experience, seeing media images of U.S. exploitation of chimpanzees encourages Africans to purchase baby chimpanzees from local markets as a pet. For example, when I have interviewed individuals in Congo who have had their pet chimpanzees confiscated, owners have typically reported that they believed that chimpanzees made good pets in part because they have seen them dressed up in clothes in American magazines and television. Such images also broadcast to the world that there is a market for privately owned chimpanzees in the U.S., which only increases the financial incentive to meet this local and global demand for chimpanzees through poaching and trafficking of the wild populations. Thus, U.S. exploitation of captive chimpanzees directly affects chimpanzee populations in the wild.

(Declaration of Brian Hare at ¶ 10).

Stephen Ross has studied these impacts on American viewers, and sees no reason why the results would be any different for the African public:

It is common knowledge that U.S. print and film media is seen in Africa, as well as the rest of the world; therefore, the use of chimpanzees in U.S. entertainment is likely having negative conservation impacts worldwide.

(Declaration of Stephen Ross at ¶ 10).

Africans (and those in other countries, particularly in Europe and the Middle East, where smuggling of wild chimpanzees is readily possible) who are encouraged by U.S. media depictions to acquire a chimpanzee for pet or entertainment purposes create a demand for live chimpanzees separated from their mothers, thereby providing the financial impetus for poaching and trafficking of wild populations. This increased regional demand, combined with the advertisement of demand in the

U.S., heightens commercial interest in the species.¹²⁴

As explained by Ian Redmond, “using chimps in commercials . . . just encourages poachers to think they can make money by selling baby chimps, which they capture by killing their parents.”¹²⁵

Dr. Wrangham agrees with this assessment:

In addition to increasing demand for pet and entertainment chimpanzees, both domestically and internationally, American media broadcasts the commercial use of this imperiled species and increases international commercial interest in trading the species. Thus, exploitation of captive chimpanzees in the U.S. negatively impacts wild populations by fueling poaching and trafficking of the species.

(Declaration of Richard Wrangham at ¶ 9).

Deborah Cox, who has worked to rehabilitate wild chimpanzees confiscated from poachers for over a decade, has also found that U.S. entertainment exploitation negatively impacts chimpanzee populations:

Because American media permeates cultures worldwide, people all over the world see chimpanzees in advertisements, comical posters, television shows, and films. These media depictions increase demand for pet chimpanzees and broadcast the lucrative international market for young chimpanzees. Thus, the exploitation of chimpanzees in the U.S., even if those chimpanzees are bred in captivity, negatively impacts the survival of the species by contributing to demand for live chimpanzees and the attendant poaching and trafficking. Poachers in Africa are frequently aware of this market, especially those living in urban areas, and make a substantial profit from selling wild chimpanzees to local private owners (frequently expatriates who illegally keep them as pets), or smuggling them internationally for sale to pet owners

¹²⁴ See, e.g., Brian Hare & Vanessa Woods, *The Science Behind Why Chimps Are Not Pets*, PBS, The Human Spark (March 6, 2009).

¹²⁵ ENV'T NEWS SERVICE, *Pepsi TV Ad with Chimp Draws Boycott Threat* (February 15, 2005).

and exhibitors outside of chimpanzee range countries. To reverse this unsustainable trend and prevent the extinction of the species, it is imperative that all feasible actions are taken to decrease market demand for chimpanzees. This includes eliminating the use of chimpanzees for pets, entertainment, advertising, and other commercial purposes throughout the world.

(Declaration of Deborah Cox at ¶ 9).

In her nearly fifty years studying the species in the wild and investigating exploitation of captive chimpanzees, Dr. Goodall's work demonstrates the same connection:

Exploitation of captive chimpanzees in U.S. media, facilitated by the lack of adequate legal protection for these individuals, has a global audience. When chimpanzees are portrayed alongside Hollywood stars, people around the world may be more inclined to acquire a chimpanzee in order to emulate the behavior of these wealthy American celebrities.

(Declaration of Jane Goodall at ¶ 12).

Not only does exploitation of chimpanzees in the U.S. contribute to poaching and trafficking of wild chimpanzees, but such exploitation (and lack of U.S. legal protection) impacts the conservation attitudes of African citizens and government officials in a way that is highly detrimental to the conservation of the species. Such anti-conservation attitudes are antithetical to conserving the species, as the public is less likely to support protective efforts. For example, the fact that in the U.S. private ownership of chimpanzees is legal is viewed as hypocritical by some Africans, who are almost universally prohibited from capturing or possessing chimpanzees. This inequity undermines chimpanzee conservation efforts by alienating people who live near chimpanzee populations and who make daily decisions that impact the species' survival. In addition, African government officials are not persuaded by western conservationists who ask these officials to do even more than they have already done to protect the species when the U.S. does not fully protect the chimpanzees within its territory.

According to Dr. Wrangham:

The problem of moral consistency is a very real one – it is extremely awkward to be an advocate for conservation of this species when coming from a country that is arguably the most powerful in the world, and has many captive chimpanzees, but does not have the same high legal standards as chimpanzee range countries. The value and importance of personal relationships between conservationists, communities, and land managers cannot be underestimated.

(Declaration of Richard Wrangham at ¶ 10).

Dr. Hare, Deborah Cox, and Ian Redmond have all found the same to be true:

In my experience, this hypocrisy of the U.S. in allowing domestic exploitation of chimpanzees while simultaneously arguing they must be conserved in Africa, results in a loss of political capital, making it more difficult for western conservationists to convince African communities and decision-makers to take action to protect chimpanzees. For example, in my experience, it is often the case that in convincing regional governments to enforce laws to confiscate pet chimpanzees, officers quickly cite the fact that westerners should not shake their fingers when they themselves keep chimpanzees as pets in their own country.

(Declaration of Brian Hare at ¶ 11).

[T]he lack of protection granted to chimpanzees living in the United States puts conservationists in the difficult situation of advocating for increased protection in Africa, such as better law enforcement to stop poaching and trafficking, while private ownership and commercial exploitation are legal in the U.S. Americans and other westerners want chimpanzee range countries in Africa to actively participate in conservation of the species in the wild, but have yet to take proper measures to protect the species domestically. The lack of U.S. protection of captive chimpanzees, facilitating exploitation of this species as pets, in entertainment and advertising, and for

other commercial purposes, undermines conservations efforts.

(Declaration of Deborah Cox at ¶ 11).

[T]he legal inequity that allows Americans to own and trade chimpanzees while Africans are strictly prohibited from doing so costs western conservationists political capital with African decision-makers and local communities – relationships that are essential for the implementation of successful conservation measures.

(Declaration of Ian Redmond at ¶ 11).

Further, allowing domestic possession and trade of chimpanzees in the United States sends the message that owning and selling this endangered species for personal use is acceptable, which is contrary to the United State’s international efforts to eliminate live capture of wild chimpanzees for the pet and entertainment trades. For example, in 2000, Congress passed the Great Ape Conservation Act, recognizing that addressing “the threats to the long-term viability of populations of great apes in the wild will require the joint commitment and effort of countries that have within their boundaries any part of the range of great apes, the United States and other countries.”¹²⁶ As part of this *in situ* conservation effort, the U.S. funds programs abroad to protect chimpanzees from extinction; many of these programs are for increased enforcement capacity to minimize poaching and trafficking and public awareness campaigns to educate communities on the negative conservation and human health impacts of the bushmeat and pet trades. (See Appendix K for a summary of projects funded by the U.S. Great Ape Conservation Fund from 2001-2007).

For one particular project in 2007, the Service granted \$26,000 to a non-profit to assist in reintroducing chimpanzees into the wild, all of whom were captured by, and later confiscated from, poachers and traffickers.¹²⁷ In this decade alone, the U.S. has spent millions of dollars aiding chimpanzee conservation abroad. Ironically, however, at the same time, the split-listing facilitates continued exploitation of chimpanzees in the United States, thereby driving and perpetuating the precise behavior that the Great Ape Conservation Act attempts to curtail. For the U.S. to be effective in assisting chimpanzee conservation, the Service must take

¹²⁶ The Great Ape Conservation Act of 2000, Public Law 106-411.

¹²⁷ Grant number GA-0394 to the Pan African Sanctuary Alliance.

important, long-overdue steps at home to prevent actions that are detrimental to the survival of the species.

While the exploitation of chimpanzees for biomedical research purposes is not as observable as the pet and entertainment trades, such use also negatively impacts chimpanzee conservation. Although federal funding cannot be used directly to support projects involving the capture or procurement of wild chimpanzees,¹²⁸ exploitation for biomedical purposes nevertheless negatively affects the conservation of this endangered species. As discussed above, because the split-listing means that captive chimpanzees are not protected from interstate commerce in the U.S., laboratories may purchase chimpanzees from other private owners, and vice-versa. Thus, biomedical use of chimpanzees can reinforce the pet and entertainment trades, which have a demonstrated negative effect on conservation, by providing an opportunity for pet and entertainment owners to relinquish adolescent and adult chimpanzees who have become either too dangerous or unprofitable, and replace them with younger chimpanzees. Further, as with breeding of captive chimpanzees for pet and entertainment purposes, the breeding of chimpanzees in biomedical labs, though largely prohibited today, has not been done in a manner that maintains genetic integrity of the species.¹²⁹

Biomedical research also undermines conservation efforts by diverting federal funds that could be spent to support conservation efforts. For example, it is possible to do non-invasive biomedical research on chimpanzees in sanctuaries in Africa, and even in the wild, and funding such studies would have the effect of supporting conservation by increasing a protective human presence, which deters poachers. Dr. Goodall has experience with this:

[N]on-invasive research done in wild populations, closely monitored by scientists and conservationists, can benefit not only human medicine but chimpanzee well-being, as well. Moreover, a long-term research presence helps chimpanzee conservation by providing protection from

¹²⁸ Public Law 102-394 states that no appropriations to federal agencies can be used to fund any project, public or private, “that entails the capture or procurement of chimpanzees obtained from the wild.” This provision was passed after the last Endangered Species Act listing for chimpanzees, and, combined with other foreign and international laws enacted over the last twenty years, has resulted in a reduction of chimpanzees taken from the wild to be sold on the open market to biomedical research facilities.

¹²⁹ See *e.g.*, NATIONAL RESEARCH COUNCIL, CHIMPANZEES IN RESEARCH, at 7 (1997) (explaining how the rampant over-breeding of chimpanzees in biomedical laboratories led to a “surplus” of chimpanzees).

poachers and drawing attention to the plight of particular populations.

(Declaration of Jane Goodall at ¶ 14).

Dr. Wrangham also sees the same potential:

There is tremendous opportunity to conduct non-invasive research on wild chimpanzees in both African sanctuaries and at research stations for wild chimpanzees (for example by collecting urine and fecal samples from wild populations that may even provide information relevant to human medicine and performing behavioral experiments on chimpanzees in sanctuaries). Establishing long-term field studies also benefits conservation – biological data not only help improve wildlife management, but there are indirect benefits to conservation as well, such as improved community relationships, improved economic conditions (i.e., through eco-tourism), and training future generations of stewards.

(Declaration of Richard Wrangham at ¶ 12).

Dr. Hare has performed such studies and agrees with this assessment:

Instead of maintaining chimpanzee populations in stark laboratory settings that do not assist chimpanzee conservation efforts, non-invasive research can be carried out more effectively in sanctuaries in Africa, which has the added benefit of supporting conservation efforts.

(Declaration of Brian Hare at ¶12).

One recent example of such work involved a long-term study of chimpanzees in Gombe Stream National Park in Tanzania, where medical researchers worked alongside behavioral researchers to identify individuals that were infected with simian immunodeficiency virus to track the progression of their disease, which may have positive implications for human medicine as well as conservation.¹³⁰

¹³⁰ Brandon F. Keele et al., *Increased mortality and AIDS-like immunopathology in wild chimpanzees infected with SIVcpz*, NATURE vol. 460, 515-519 (July 23, 2009). This ground-breaking study used non-invasive methods, including urine and fecal samples, as well as necropsy to track the

Thus, exploitation of chimpanzees in the U.S., which is facilitated by the FWS' inadequate regulatory mechanism of split-listing this species, not only does not provide for conservation of the species, but actively undermines such efforts.

IV. Conclusion

As the FWS considers the evidence presented herein, co-petitioners urge the agency to be mindful of the fact that findings over the last twenty years have revealed just how closely related, both phylogenetically and behaviorally, humans and chimpanzees are.

Chimpanzee scientific classification:

Order: Primates

Family: Hominidae

Subfamily: Homininae

Tribe: Hominini

Genus: Pan

Human scientific classification:

Order: Primates

Family: Hominidae

Subfamily: Homininae

Tribe: Hominini

Genus: Homo

New fossil evidence and genetic data shed light on the evolution resulting in the differentiation between humans and our closest living relative, the chimpanzee (*Pan troglodytes*). While the fossil record of the divergence of the human and chimpanzee lineages is incomplete,¹³¹ this phylogenetic relationship is further elucidated by DNA evidence. In 2003, scientists compared the genetic code of 97 genes similar to humans, chimpanzees, gorillas, and orangutans, identifying functionally important substitutions that provide evidence of having evolved under

progression of disease resulting from natural SIV infection. If not for the well-established behavioral research, which allowed individuals to be clearly identified, this study would not have been possible. See also Elizabeth V. Lonsdorf, *The Role of Behavioral Research in the Conservation of Chimpanzees and Gorillas*, J. OF APPLIED ANIMAL WELFARE SCIENCE vol. 10, no. 1, 71-78 (2007).

¹³¹ See Tim D. White et al., *Ardipithecus ramidus and the Paleobiology of Early Hominids*, SCIENCE vol. 326, 75-86 (2009); Gen Suwa et al., *A new species of great ape from the late Miocene epoch in Ethiopia*, NATURE vol. 448, 921-924 (August 23, 2007); Milford H. Wolpoff et al., *An Ape or the Ape: Is the Toumai Cranium TM 266 a Hominid?*, PALEOANTHROPOLOGY 2006: 36-50; Camilo J. Cela-Conde & Francisco J. Ayala, *Genera of the human lineage*, PROCEEDINGS OF THE NAT'L ACAD. OF SCIENCES vol. 100, no. 13, 7684-7689 (June 24, 2003); Ann Gibbons, *In Search of the First Hominids*, SCIENCE vol. 295, 1214-1219 (2002); R.L. Stauffer et al., *Human and Ape Molecular Clocks and Constraints on Paleontological Hypotheses*, J. OF HEREDITY vol. 92, no. 6, 469-474 (2001). While the human lineage is fairly well represented in fossils, it was not until 2005 that the first ever chimpanzee fossil, dated to half a million years ago in Kenya, was reported. Sally McBrearty & Nina G. Jablonski, *First fossil chimpanzee*, NATURE vol. 437, 105-108 (September 1, 2005). The lack of other fossil evidence is likely due to the fact that chimpanzee habitat is tropical forest that does not provide adequate conditions for fossil preservation.

the force of natural selection.¹³² The results show that chimpanzees and humans share 99.4 percent identity at functionally important sites and 98.4 percent identity at functionally less important sites, and that the most recent common ancestor of humans and chimpanzees existed between 5 and 6 million years ago. The evidence also indicates that chimpanzees and humans are more closely related than either species is to the gorilla or orangutan, prompting the authors of the study to suggest that chimpanzees should be reclassified within the human genus *Homo*.¹³³

In 2005, scientists decoded the entire chimpanzee genome, finding that nearly 99 percent of the entire genetic code is shared with the human genome.¹³⁴ The differences, contained in 40 million base pairs (1.3% of the genome), mostly reflect random genetic drift, but also include the functionally important changes that cause the differences between the two species.¹³⁵

It has become clear in the last twenty years that humans and chimpanzees are very closely related; therefore, it is not surprising that the species share similar cognitive, emotional, and cultural traits. Behavioral research over the past forty years, including many recent discoveries, has revealed much about the remarkable capabilities that chimpanzees display, including:

- Recognition of self, implying an ability for abstraction and self-consciousness;¹³⁶
- Numerical skills, including counting abilities that are comparable in their development to those of young children, and numerical memorization abilities that can exceed those of adult humans;¹³⁷

¹³² Derek E. Wildman et al., *Implications of natural selection in shaping 99.4% nonsynonymous DNA identity between humans and chimpanzees: Enlarging genus Homo*, PROCEEDINGS OF THE NAT'L ACAD. OF SCIENCES vol. 100, no. 12, 7181-7188 (June 10, 2003).

¹³³ *Id.* See also Michael Gross, *Homo gets a Panning*, CURRENT BIOLOGY vol. 13, no. 12, 464-465 (June 17, 2003).

¹³⁴ The Chimpanzee Sequencing and Analysis Consortium, *Initial sequence of the chimpanzee genome and comparison with the human genome*, NATURE vol. 437, 69-87 (September 1, 2005).

¹³⁵ *Id.* See also, George H. Perry et al., *Copy number variation and evolution in humans and chimpanzees*, GENOME RESEARCH vol. 18, 1698-1710 (2008).

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- Productive use and comprehension of symbolic language systems of several types, including American Sign Language and graphic symbols that are computer-interfaced to display which word-like symbols are chosen and the order in which they have been selected;¹³⁸
- Extensive problem-solving skills observed both in the wild and in captivity;¹³⁹
- Recognition of kin relationships;¹⁴⁰
- Understanding that other chimpanzees may have the same or a different set of beliefs, desires, and knowledge – a capacity formerly believed to be unique to humans;¹⁴¹
- A broad emotional range comparable to that observed in humans, with considerable overlap in facial expressions and gestures (including laughter) that correspond to similar emotional states in humans (with one notable exception: when chimpanzees bare both upper and lower teeth it is actually a sign of fear or apprehension, very unlike the human smile it approximates);¹⁴²

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- Behavioral and emotional pathologies also observed in humans, including depression, various types of neuroses, anxiety, and grief so severe that it can lead to death;¹⁴³
- An extensive list of some 39 cultural behavior patterns found in wild chimpanzees, many unique to specific populations, including termite fishing, nut cracking, spear hunting, and grooming. These behaviors evidence “culture” because they are transmitted repeatedly through social or observational learning to become a population-level characteristic. Chimpanzee experts note that these documented patterns of variation are far more extensive than those found in any other species except humans.¹⁴⁴

Therefore, the best scientific data demonstrate that the chimpanzee is a species whose genetic, anatomical, neurological, behavioral, and cognitive similarity to humans is unique among other living species. While all endangered species deserve, and are legally entitled to, protection, evidence that chimpanzees have highly developed cognitive and emotional capabilities makes commercial exploitation of this species particularly objectionable.

For the reasons stated herein, the Service must reclassify captive chimpanzees as endangered so that all individuals of *Pan troglodytes* are properly protected. This petition presents substantial information demonstrating that such action is warranted; accordingly, co-petitioners expect a finding within 90 days that the Service will commence a status review, as required by the ESA. (16 U.S.C. § 1533(b)(3)). Co-petitioners are confident that a status review of the species will reveal the need to amend the existing regulations regarding *Pan troglodytes* to fully protect both captive and wild individuals of the species.

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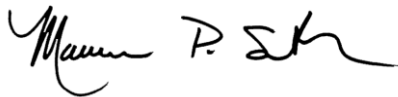
Respectfully submitted by:



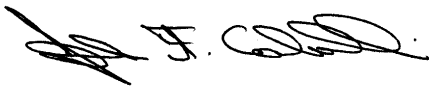
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