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⟨Articles⟩

# United States Law and Tigers Kept as Pets in North America

Daryl Masao Arakaki

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## I. Introduction

In Japan, and throughout many parts of Asia, the year 2010 is being celebrated as the “Year of the Tiger”. Getting into the spirit of the New Year, I went to a couple of zoos to photograph the tigers on display. It had

been about a decade since my last visit to a zoo, and I had forgotten how intimidating and powerful a tiger looks, even one that is behind a thick wall of protective glass. After photographing “Heian”, the male tiger at Kobe Oji Zoo, and “Senichi” and “Ayako”, the male and female at Tennoji Zoo, a thought occurred to me. As natural and wild-looking as these magnificent creatures are, they were actually born and raised in captivity in Japan<sup>1)</sup>, and in a sense could be characterized as “pets” that are totally dependent on the zookeepers who supply them with food and shelter.

Recalling my own innocent childhood fantasies of wanting to buy and keep a pet tiger, I imagined what comically tragic scenes might occur if there were a 300-kilogram meat-eating beast living in my back yard. But since tigers are listed as “endangered” on the International Union for Conservation of Nature’s red list of threatened species<sup>2)</sup>, I reassured myself that only a zoo or other responsible professional organization could possibly be allowed to keep a tiger in captivity. While doing internet research a few days later, I learned that my assumption was very mistaken. In actuality, there are many people in North America who privately keep tigers and other big cats (lions, leopards, etc.) as pets. There was even one gentleman in Canada who was killed by one of his own pet tigers on the very same day that I was visiting “Heian” at the Kobe Oji Zoo.<sup>3)</sup>

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- 1) Heian was born on 31 March 1995 at the Kyoto Municipal Zoo. Senichi was born on 26 May 2003 at the Tama Zoo in Tokyo. Ayako was born on 7 June 1997 at Tennoji Zoo in Osaka.
  - 2) <http://www.iucnredlist.org/apps/redlist/details/15955/0> (viewed 20 January 2010).



*Heian*, the male at Kobe Oji Zoo. Photo taken on January 11, 2010.

In this article, I will attempt to: 1) introduce the problem of tigers being kept as private pets in North America, 2) discuss international and United States federal law (the Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>4)</sup>, the Endangered Species Act<sup>5)</sup>, the Animal Welfare Act<sup>6)</sup>, the Captive Wildlife Safety Act<sup>7)</sup>), that

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3) *Man Killed by Pet Tiger 'Had No Fear'* (posted 12 January 2010) <http://news.aol.ca/article/man-killed-by-pet-tiger-had-no-fear/768573/>. see also Mark Lipe, *Animal groups urge tougher laws after Ontario tiger owner killed* (posted 11 January 2010) <http://www.nationalpost.com/story.html?id=2430155>.

4) Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, 27 U. S. T. 1087, 993 U. N. T. S. 243.

5) Act Dec. 28, 1973, P. L. 93-205, 87 Stat. 884. The Act appears as 16 USCS Section 1531 et seq.

6) Act Aug. 24, 1966, P. L. 89-544, 80 Stat. 350. The Act appears as 7 USCS Section 2131 et seq.

relate to captive tigers in the United States, and 3) highlight a few examples of state level laws and cases involving the private ownership of tigers and assigning liability for accidents involving privately kept tigers.

## II. Tigers as pets in North America

About one hundred years ago, tigers could be found throughout Asia—from Turkey and the Caspian area in the west, to the Korean Peninsula in the east, from India and Indonesia in the south, to the Russian Far East in the north, and throughout China in the middle.<sup>8)</sup> In the years since, human activities such as forest clearing for agriculture and timber harvesting, and the development of road networks, have resulted in the loss of 93% of the tiger's former habitat range.<sup>9)</sup> This loss of habitat range, coupled with hunting (and more recently poaching), have resulted in a dramatic decrease in tiger numbers. It is thought that there were about 100,000 tigers at the beginning of the 20<sup>th</sup> Century.<sup>10)</sup> According to the International Union for Conservation of Nature (IUCN), the present global population of tigers in the wild is estimated to range from 3,402 to 5,140 individuals.<sup>11)</sup> Of even greater concern is that when the numbers are

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7) Act Dec. 19, 2003, Pub. L. No. 108-191, 117 Stat. 2871 The Act appears as 16 U. S. C. Section 3371 et seq.

8) WWF (formerly World Wildlife Fund) homepage at [http://www.panda.org/what\\_we\\_do/endangered\\_species/tigers/about\\_tigers/tiger\\_habitat/](http://www.panda.org/what_we_do/endangered_species/tigers/about_tigers/tiger_habitat/) (viewed 3 February 2010).

9) *Ibid.*

10) WWF (formerly World Wildlife Fund) homepage at [http://www.panda.org/what\\_we\\_do/endangered\\_species/tigers/about\\_tigers/tiger\\_population/](http://www.panda.org/what_we_do/endangered_species/tigers/about_tigers/tiger_population/) (viewed 3 February 2010).

11) <http://www.iucnredlist.org/apps/redlist/details/15955/0> (viewed 20 January 2010).

adjusted to count only those individuals likely to breed and reproduce, the effective population size could be as few as 1,361 to 2,056 reproductively successful adults. The situation is so dire that some say the wild tiger populations of Vietnam, Laos and Cambodia may become extinct as soon as the year 2022.<sup>12)</sup> In late January 2010, the government of Indonesia (which has about 200 Sumatran tigers remaining in the wild) announced a curious plan to try to save the species by selling to private parties the right to keep tigers in captivity at the price of 1 billion rupiah (US\$108,000) a pair.<sup>13)</sup> Indonesian officials denied that they are selling the animals, and stated that they are only authorizing people to "look after" the tigers under government-controlled conditions and that the animals would still be the property of the government.

Recent articles in the newspapers indicate that plight of tigers in the wild is growing even more desperate. A report from India states that the India Environment Ministry has ordered reductions of tourism activities in the core regions of India's thirty-seven tiger reserves because the traffic of ever increasing numbers of tourists in vehicles and on elephants are destroying the high grasslands in which the tigers hunt and driving away their prey.<sup>14)</sup> This pressure is causing the already fragile number of

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12) *Mekong tigers plunge to 'crisis point'*, THE DAILY YOMIURI, 29 January 2010 at 14, citing comments made by Nick Cox of the WWF. See also *Tigers '20 years from extinction'*, THE DAILY YOMIURI, 29 October 2009 at 5, citing comments made by Mahendra Shrestha, program director of the Washington-based Save the Tiger Fund.

13) *Indonesia to save tigers by selling them as pets*, THE DAILY YOMIURI, 23 January 2010 at 5.

14) Rhys Blakely, *Tigers being 'loved to extinction'*, THE DAILY YOMIURI, May 2, 2010 at 11.

Bengal tigers to decrease. A separate news article explains that a mysterious disease in Siberia has already claimed the lives of a number of Amur tigers and that Russian scientists fear that the disease might kill off all tigers in that country.<sup>15)</sup> Clearly, without dramatic improvements in the protection of tigers and their habitats, the number of tigers in the wild will continue to decrease.

And yet, while the global numbers of tigers in the wild are continually decreasing, recent advances in the science of animal husbandry have resulted in an increase in the numbers of tigers bred and kept in captivity around the world. Ironically, there may now be more tigers alive in captivity in North America than there are in the wild throughout Asia. In July 2008, TRAFFIC, a wildlife trade monitoring network that is a joint program of the WWF (formerly World Wildlife Fund) and the IUCN, produced a report regarding the captive tiger population in the United States.<sup>16)</sup> Although the report stated that it is impossible to pinpoint the exact population of tigers in captivity in the United States<sup>17)</sup>, it cited a year 2005 estimate of 4,692 tigers in four categories of captive populations in the United States: 264 Tigers kept in facilities accredited by the Association of Zoos and Aquariums (AZA), approximately 1,179 tigers kept in animal “sanctuaries” or “refuges”, approximately 2,120 tigers held

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15) Patrick Evans, *Siberian tiger driven to brink of extinction*, THE JAPAN TIMES, June 26, 2010 at 13.

16) Williamson, D. F. and L. A. Henry (2008), *Paper Tigers?: The Role of the U. S. Captive Tiger Population in the Trade in Tiger Parts*. TRAFFIC North America, Washington D. C. World Wildlife Fund. Hereafter referred to as TRAFFIC Report.

17) TRAFFIC report at 2 and 17.

by facilities licensed by the United States Department of Agriculture (USDA), and about 1,129 tigers kept in private collections.<sup>18)</sup> In February 2009, the California-based Captive Wild Animal Protection Coalition estimated that as many as 7,000 tigers were currently being kept as pets in the United States.<sup>19)</sup> One Texas newspaper reported that there were as many as 3,000 tigers in that state alone.<sup>20)</sup> In Canada, the World Society for the Protection of Animals provided an estimate of 500 tigers being kept as pets just in the province of Ontario.<sup>21)</sup>

Captive tigers in North America have become so common that they can be purchased for surprisingly low prices. The *National Geographic* reported in 2003 that a tiger cub could be bought for under \$400—less than the cost of a purebred puppy.<sup>22)</sup> In 2008, a group from a Texas wildlife ranch was investigated for allegedly trying to sell two orange Bengal tiger cubs for \$900 per animal and four white tiger cubs for \$5,500 each.<sup>23)</sup> Ironically, the sale of the tigers apparently did not violate Texas

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18) TRAFFIC report at 17 to 19.

19) Keith Thompson, *It's Not Just Chimps: Americans Have 7,000 Pet Tigers* (Posted 18 February 2009) [http://www.huffingtonpost.com/keith-thompson/its-not-just-chimps-ameri\\_b\\_168094.html](http://www.huffingtonpost.com/keith-thompson/its-not-just-chimps-ameri_b_168094.html).

20) Melissa Del Bosque, *A Tiger's Tale*, TEXAS OBSERVER (posted 5 September 2008) <http://www.texasobserver.org/article.php?aid=2835>.

21) Peter Dickinson, *500 Tigers kept as pets in Ontario, Canada!* <http://zoonewsdigest.blogspot.com/2010/01/500-tigers-kept-as-pets-in-ontario.html> (posted 14 January 2010).

22) Brian Handwerk, *Big Cats Kept as Pets Across U. S., Despite Risk*, NATIONAL GEOGRAPHIC ULTIMATE EXPLORER, [http://news.nationalgeographic.com/news/2002/08/0816\\_020816\\_EXPLcats.html](http://news.nationalgeographic.com/news/2002/08/0816_020816_EXPLcats.html) (posted 9 October 2003).

23) Ryan Holeywell, *Police investigate sale of tigers in Wal-Mart parking lot*, THE MONITOR <http://www.themonitor.com/articles/ones-13216-cubs-selling.html> (posted 16 June 2008).

law, but the charges were made because the buyers in the transaction were allegedly planning to transport the tigers across the border into Mexico, a violation of CITES. According to TRAFFIC, as of 2007, twenty-four U. S. states allowed the keeping of tigers as “pets”.<sup>24)</sup>

This proliferation of tigers in private captivity has resulted in a number of bizarre situations; some with tragic endings. In 2003, New York authorities were called to a public housing high-rise where a 37-year old man had raised a tiger cub in his apartment.<sup>25)</sup> Police had to be called in after the tiger had grown to a size of more than 400 pounds (181 kilograms) and the man could no longer control the animal. In the end, the man resorted to feeding the tiger by throwing raw chickens through a narrowly opened door. In the same year, Roy Horn of the famous magician duo “Siegfried & Roy” was attacked and almost killed by one of his tigers during a live magic show.<sup>26)</sup> In 2006, a 500-pound (227 kilogram) tiger being kept in a private collection crashed through a wire cage and killed one of its owner’s employees.<sup>27)</sup> In 2008, a volunteer at an animal refuge in Missouri had to have one leg amputated below the knee

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24) TRAFFIC report at 15.

25) Lydia Polgreen and Jason George, *From a Cub to a Menace, and Now a Mystery*, THE NEW YORK TIMES <http://www.nytimes.com/2003/10/06/nyregion/from-a-cub-to-a-menace-and-now-a-mystery.html?pagewanted=1> (posted 6 October 2003).

26) The Humane Society of the United States, *Siegfried & Roy Incident Underscores the Dangers of Exotic Pets*, [http://www.hsus.org/wildlife/wildlife\\_news/siegfried\\_roy\\_incident\\_underscores\\_the\\_dangers\\_of\\_exotic\\_pets.html](http://www.hsus.org/wildlife/wildlife_news/siegfried_roy_incident_underscores_the_dangers_of_exotic_pets.html) (posted 6 October 2003).

27) Philip Bethge, *Me and My Pet Tiger: “Trespassers Will Be Eaten”*, SPIEGEL ONLINE INTERNATIONAL <http://www.spiegel.de/international/spiegel/0,1518,453035,00.html> (posted 8 December 2006).

after he was severely attacked by an 800-pound (363 kilogram) tiger that had managed to scale a twelve-foot (3.6 meter) high chain link fence.<sup>28)</sup> Just the day before, a sixteen-year old worker at another facility was attacked by three tigers when he entered their pen to take a picture.<sup>29)</sup> According to the home page of "Big Cat Rescue" a non-profit group that provides a permanent home for unwanted wild cats, there were at least 596 incidents in the United States involving captive exotic cats in the period from 1990 to January 2010. These incidents resulted in the deaths of 21 humans (16 adults, 5 children) and the mauling of 196 more adults and children.<sup>30)</sup>

And, apparently, humans are not the only victims when people attempt to keep tigers as pets. According to the Humane Society of the United States, "tigers kept as pets or held in roadside zoos suffer from abuse, poor diet, lack of veterinary care, and painful physical ailments from random inbreeding. A few lucky ones end up in accredited sanctuaries. Most are dumped into pseudo-shelters that operate like puppy mills. They breed the big cats to churn out cubs for sale on the Internet or at exotic animal auctions."<sup>31)</sup> In one 2003 case, the New Jersey Department

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28) Keegan Hamilton, *Hold That Tiger: The recent big cat attacks in Missouri have residents and state officials calling for tougher exotic animal laws* <http://www.riverfronttimes.com/2008-08-20/news/hold-that-tiger-the-recent-big-cat-attacks-in-missouri-have-residents-and-state-officials-calling-for-tougher-exotic-animal-laws/> (posted 19 August 2008).

29) *Ibid.*

30) Big Cat Rescue, *Big Cat Attacks* [http://www.bigcatrescue.org/big\\_cat\\_news.htm](http://www.bigcatrescue.org/big_cat_news.htm) (viewed 19 January 2010).

31) The Humane Society of The United States, *Captive Wildlife Safety Act: A Good Start in Banning Exotics as Pets* [http://www.hsus.org/legislation\\_laws/wayne\\_pacelle\\_the\\_animal\\_advocate/captive\\_wildlife\\_safety\\_act\\_a\\_good\\_start\\_in\\_bann](http://www.hsus.org/legislation_laws/wayne_pacelle_the_animal_advocate/captive_wildlife_safety_act_a_good_start_in_bann)

of Environmental Protection confiscated 24 neglected and unpermitted tigers from a private facility in the state where the tigers were kept in enclosures filled with feces, urine and mud.<sup>32)</sup> Allegedly, some of the tigers were kept in spaces so cramped that they barely had room enough to turn around or stand. The state further claimed that the owners “failed to refrigerate the tiger’s food, and routinely fed them rotting deer carcasses, black with flies, and other spoiled meat.”<sup>33)</sup>

Situations similar to the New Jersey case have resulted in a number of non-profit organizations creating big cat sanctuaries and rescue facilities. One such exotic cat sanctuary, “Big Cat Rescue”, stated that in the eleven year period from 1999 to 2009, they received calls relating to 1,067 unwanted big cats. Of the 1,067 big cats, they were only able to take in 79 animals and find homes for another 19 animals.<sup>34)</sup> Another sanctuary and rescue facility for big cats, “Tiger Haven”, had 289 great cats as of January 2010.<sup>35)</sup> Both Big Cat Rescue and Tiger Haven discourage the private ownership of big cats as pets and do not breed the animals in their possession. To do so would only compound the problem. Indeed, it appears to be an ironic situation: while there are not enough tigers in the wild, there is an excess of unwanted tigers in captivity in North America.

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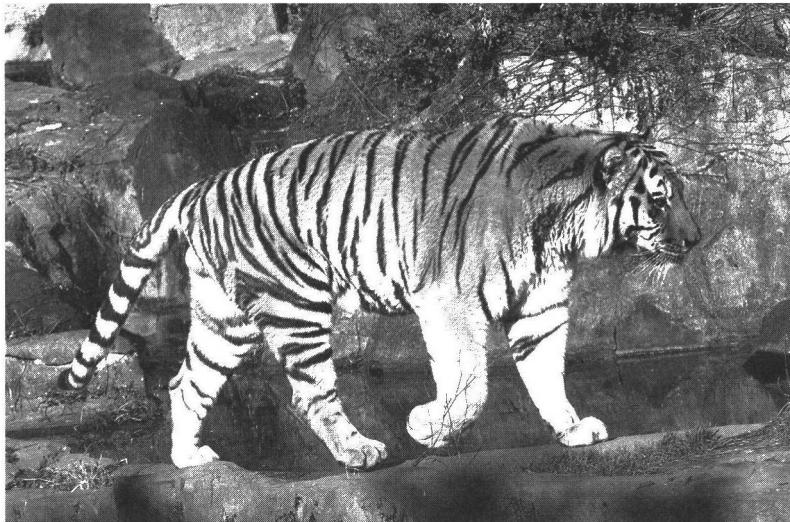
ing\_exotics\_as\_pets.html (viewed 20 January 2010).

32) New Jersey Department of Environmental Protection news release at [http://www.state.nj.us/dep//newsrel/releases/03\\_0163.htm](http://www.state.nj.us/dep//newsrel/releases/03_0163.htm) (viewed 23 January 2010).

33) Ibid.

34) Big Cat Rescue homepage at [http://www.bigcatrescue.org/animal\\_abuse.htm](http://www.bigcatrescue.org/animal_abuse.htm) (viewed 19 January 2010).

35) Tiger Haven homepage at <http://www.tigerhaven.org/> (viewed 20, January 2010).



*Senichi*, the male at Tennoji Zoo in Osaka. Photo taken on January 24, 2010.

In the next section, I will discuss the interplay of laws which allowed this irony to occur.

### III. CITES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was drafted as the result of a resolution adopted in 1963 at a meeting of the International Union for Conservation of Nature (IUCN).<sup>36)</sup> The text of the Convention was finally agreed upon at a meeting of representatives from 80 countries in Washington, D. C., United States of America, on March 3, 1973.<sup>37)</sup> CITES places strict

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36) CITES web page at <http://www.cites.org/eng/disc/what.shtml> (viewed on 13 February 2010).

restrictions on the international commercial import and export of plant and animal species that are believed to be actually or potentially harmed by trade.<sup>38)</sup> In 2010, there are now 175 countries that have joined the Convention and have agreed to be legally bound by its terms.<sup>39)</sup> The tiger, *Panthera tigris*, is listed in Appendix I of CITES,<sup>40)</sup> meaning that it is recognized as a species threatened with extinction. According to Article III of CITES, the export of an animal listed in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;
- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or

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37) This treaty is often referred to in Japan as the “Washington Joyaku”「ワシントン条約」, see web-site for Japan Ministry of Foreign Affairs: <http://www.mofa.go.jp/mofaj/gaiko/kankyo/jyoyaku/wasntn.html> (viewed on 13 February 2010).

38) U. S. Fish & Wildlife Service, *CITES in the United States* at [http://www.fws.gov/international/DMA\\_DSA/CITES/CITES\\_home.html](http://www.fws.gov/international/DMA_DSA/CITES/CITES_home.html). (Viewed on 13 February 2010).

39) CITES web-site at <http://www.cites.org/eng/disc/parties/index.shtml> (viewed on 13 February 2010).

40) CITES appendices at <http://www.cites.org/eng/app/appendices.shtml> (viewed on 13 February 2010).

cruel treatment; and

- (d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.<sup>41)</sup>

Simultaneous with the requirement of an export permit, there is also a requirement for the prior grant and presentation of an import permit from the country on the receiving end. The conditions for the import permit are:

- (a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;
- (b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
- (c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.<sup>42)</sup>

With respect to the problems regarding tigers kept in captivity in the United States, it is important to remember that CITES does not regulate activities within a country. CITES regulates the international trade of endangered species, but CITES documents are only required when

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41) CITES Article III.

42) Ibid.



Ayako, the female at Tennoji Zoo in Osaka displays the same type of grooming behavior that one would expect of a housecat. Photo taken January 17, 2010.

CITES protected animals are shipped from one country to another country, or are taken from the high seas and imported into a country.<sup>43)</sup> As long as a captive tiger is born in the United States and is not transported across a national border, the provisions of CITES are not applicable. Wildlife experts believe that virtually all of the privately-owned tigers now in the United States were bred domestically from ancestors that were either smuggled from Asia in the 1970's, or were sold from traveling circuses and zoos.<sup>44)</sup>

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43) Stanford Environmental Law Society, *The Endangered Species Act*, 2001 at 187.

44) Doug McGill, *The Siberian Tigers of...Minnesota?*, The McGill report (12 May 2005) available at <http://www.mcgillreport.org/tigers.htm>.

## IV. The Endangered Species Act of 1973

The most important United States federal level law pertaining to tigers is the Endangered Species Act of 1973 (ESA)<sup>45)</sup>. During the 1960's, growing concern in the United States regarding the possible extinction of certain high-profile animals such as the bald eagle led to the passing of a series of legislation designed to enhance their chances of survival. In 1966, Congress passed the Endangered Species Preservation Act<sup>46)</sup>, but the Act suffered from several weaknesses, the most important being that the restrictions against taking species applied only within the National Wildlife Refuge System.<sup>47)</sup> This Act was supplemented in 1969 by the Endangered Species Conservation Act<sup>48)</sup> which recognized the international scope of the extinction crisis and banned the importation of members of listed species and products made from those organisms.<sup>49)</sup> Four subspecies of tiger, the Bali tiger (*Panthera tigris balica*), the Javan tiger (*Panthera tigris sondaica*), the Caspian tiger (*Panthera tigris virgata*), and the Sumatran tiger (*Panthera tigris sumatrae*) were included in the "United States' List of Endangered Foreign Fish and Wildlife" in 1970.<sup>50)</sup> The listing for tigers was amended in 1972 to specify

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45) Act Dec. 28, 1973, P. L. 93-205, 87 Stat. 884. The Act appears as 16 USCS Section 1531 et seq.

46) Pub. L. No. 89-669, 80 Stat. 926 (codified at 16 U. S. C. Section 668aa-668cc) (repealed by Pub. L. No. 93-205, Section 14, 87 Stat. 884, 903 (1973)).

47) Stanford Environmental Law Society, *The Endangered Species Act*, 2001 at 19.

48) Pub. L. No. 91-135, 83 Stat. 275 (codified at 16 U. S. C. Section 668cc-1 to 668cc-66) (repealed by Pub. L. No. 93-205, Section 14, 87 Stat. 884, 903 (1973)).

49) Ibid.

the entire tiger species (*Panthera tigris*),<sup>51)</sup> thereby extending protection to the remaining five subspecies that were previously unmentioned: Bengal tiger (*Panthera tigris tigris*), Amur or Siberian tiger (*Panthera tigris altaica*), Indochinese tiger (*Panthera tigris corbetti*), Malayan tiger (*Panthera tigris jacksonii*), and South China tiger (*Panthera tigris amoyensis*).

The Endangered Species Preservation Act of 1966 and the Endangered Species Conservation Act of 1969 were replaced by the Endangered Species Act of 1973.<sup>52)</sup> The ESA includes a specific finding by Congress that “the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction” pursuant to a number of international treaties. CITES is among the treaties specifically listed in the ESA.<sup>53)</sup>

The ESA explicitly makes it unlawful for any person subject to the jurisdiction of the United States to:

- import any endangered species into the United States or export any endangered species from the United States;<sup>54)</sup>

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50) 35 Federal Register 8495 (1970).

51) 37 Federal Register 6476 (1972).

52) Act Dec. 28, 1973, P. L. 93-205, 87 Stat. 884. The Act appears as 16 USCS Section 1531 et seq.

53) 16 USCS Section 1531 (a) (4) (F).

54) 16 USCS Section 1538 (a) (1) (A).

- take any endangered species within the United States or the territorial sea of the United States;<sup>55)</sup>
- possess, sell, deliver, carry or transport any illegally taken endangered species;<sup>56)</sup>
- deliver, receive, carry, transport, or ship any endangered species in interstate or foreign commerce for commercial purposes,<sup>57)</sup>
- sell any endangered species in interstate or foreign commerce.<sup>58)</sup>

Violation of the ESA results in stiff civil penalties (including fines of up to \$25,000 per violation) and criminal penalties (including fines of up to \$50,000 and imprisonment of up to 1 year) for persons who violate the Act.<sup>59)</sup>

Although the ESA is regarded to be the “broadest and most powerful law” in the world for the protection of species”,<sup>60)</sup> similar to CITES, it is not airtight when applied to tigers kept in the United States. At least in one case, a United States court ruled that the ESA ban against transporting

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55) 16 UCSC Section 1538 (a) (1) (B).

56) 16 USCS Section 1538 (a) (1) (D).

57) 16 USCS Section 1538 (a) (1) (E).

58) 16 USCS Section 1538 (a) (1) (F).

59) 16 USCS Section 1540 (a) and (b).

60) Stanford Environmental Law Society, *The Endangered Species Act*, 2001 at 10.

and selling an endangered species of big cat only pertains to cases involving interstate or foreign commerce.<sup>61)</sup> In the case of *United States v Kepler*,<sup>62)</sup> the defendant was charged with violating the ESA when he transported, without the required permits, an endangered species leopard from the state of Florida to the state of Kentucky. Although the U. S. Court of Appeals for the Sixth Circuit affirmed the defendant's conviction, it also stated that the ESA "does not prevent all sales of endangered wildlife, but only those sales in interstate or foreign commerce." The court added that the ESA does not purport to control intrastate transactions involving protected wildlife, and presumably appellant could have sold the leopard in the state of Florida.<sup>63)</sup> Therefore, according to the *United States v Kepler* ruling, the sale of a captive-bred tiger, born in one of the United States and not transported across state or national boundaries, would not run afoul of the ESA.

Furthermore, the ESA allows the Secretary of the Department of the Interior to permit activities that would normally be prohibited if the activity is for scientific purposes or to enhance the survival of the affected species.<sup>64)</sup> Pursuant to this clause, the Department of the Interior's United

61) The power of the Federal government to regulate interstate and foreign commerce originates in Article I, Section 8 of the Constitution of the United States. Amendment X to the Constitution states that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Thus while the federal government may control the sale of endangered species across state or international borders, the states themselves have authority for transactions that are strictly intrastate.

62) *United States v Kepler*, 531 F.2d 796, 6 ELR 20340 (1976).

63) *United States v. Kepler* at 797.

64) 16 USCS Section 1539 (a) (1) (A).

States Fish and Wildlife Service (USFWS) issues Captive-bred wildlife registrations that allow certain activities (possession, carrying, transportation, etc.) of an endangered species if:

- the species of wildlife is not naturally found in the United States;
- the purpose of the activity is to enhance the propagation or survival of the affected species; and
- the activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife.<sup>65)</sup>

In order to obtain the Captive-bred Wildlife registration, a person must file a request with the USFWS and must include the following information:

- the types of wildlife sought to be registered;
- a description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, and when appropriate, in conducting research directly related to maintaining and propagating such wildlife;

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65) 50 Code of Federal Regulations 17.21 (g) (1).

- photographs or other evidence showing the facilities where the wildlife will be maintained; and
- a copy of the applicant's license or registration, if any, under the animal welfare regulations of the U. S. Department of Agriculture.<sup>66)</sup>

Further complicating matters, in 1998, the USFWS eliminated the Captive-bred Wildlife registration requirement as regards to "generic" tigers.<sup>67)</sup> ("Generic" tigers are hybrids resulting from the mating of two different subspecies of tiger; for example a male Amur tiger and a female Bengal tiger.) The USFWS decision to eliminate the registration requirement with respect to generic tigers was based partly on the fact that generic tigers are genetically unsuitable for scientifically-based breeding programs.<sup>68)</sup>

Since most of the tigers kept in the United States are believed to be hybrids,<sup>69)</sup> this rule change makes it more difficult to keep track of the numbers of tigers being kept in the United States. Holders of Captive-bred Wildlife registrations must file an "individual written annual report of activities, including all births, deaths and transfers of any type".<sup>70)</sup> This reporting requirement provides a possible method to inventory the

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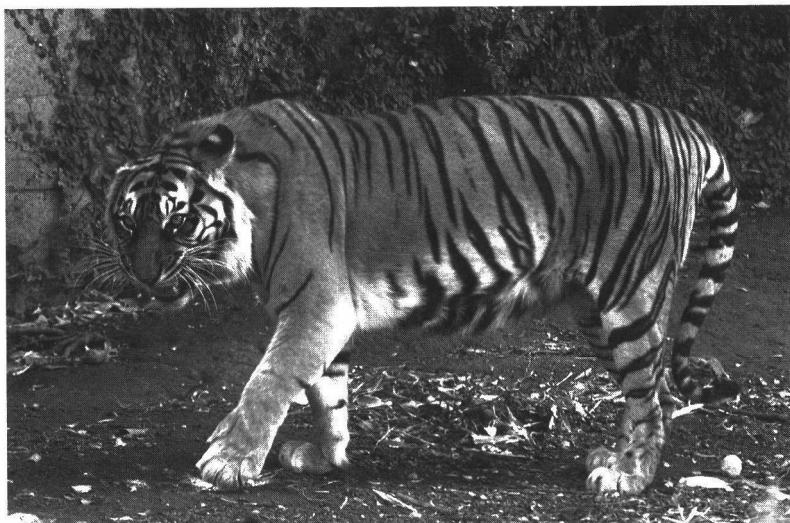
66) 50 Code of Federal Regulations 17.21 (g) (2).

67) 63 Federal Register 48634 (1998).

68) Ibid at 48638.

69) TRAFFIC report at 13.

70) 50 Code of Federal Regulations 17.21 (g) (3).



*Djelita*, one of the females at the Honolulu Zoo in Hawaii. Photo taken on March 9, 2010.

number of tigers kept pursuant to Captive-bred Wildlife registrations. In comparison, although a person who keeps a generic tiger must keep records of animal births, deaths and transfers, and must make those records accessible to USFWS agents, there is no reporting requirement.<sup>71)</sup> Without annual reports, sloppy or dishonest recordkeeping could allow for numbers of tiger cubs to be born and sold without notice to the USFWS.

Additionally, it is important to note that while the law requires less regulation of “generic” tigers (the hybrid offspring of two different subspecies of tigers) as compared to “pure blood” tigers, the law provides even less protection for interspecies hybrids such as “ligers” (a

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71) 50 Code of Federal Regulations 17.21 (g) (6) (vi).

cross between a male lion and a female tiger) and “tigons” (a cross between a male tiger and a female lion). The court in the case of *United States v. Kapp*<sup>72)</sup> ruled that since tigers are listed as endangered at the species level, hybrids of two subspecies of tigers are still accorded full protection of the ESA. By comparison, ligers or tigons, which are hybrids of tigers (*panthera tigris*, a species on the endangered list) and lions (*panthera leo*, a species not on the endangered list) are not protected under the ESA.

## V. The Animal Welfare Act

Besides the USFWS, the Department of Agriculture, through its Animal and Plant Health Inspection Service (APHIS), also has regulatory jurisdiction over many captive-bred tigers pursuant to the Animal Welfare Act (AWA).<sup>73)</sup> The AWA insures that animals intended for use in research, exhibition, or as pets are provided humane care and treatment.<sup>74)</sup> It requires that “minimum standards of care and treatment be provided for certain animals bred for commercial sale, used in research, transported commercially, or exhibited to the public.”<sup>75)</sup> Under the AWA, animal dealers and exhibitors must have a license in order to import, sell, buy, or transport animals in commerce.<sup>76)</sup> Some of the types of businesses

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72) *United States v. Kapp*, 419 F.3d 666 (2005).

73) Act Aug. 24, 1966, P. L. 89-544, 80 Stat. 350. The Act appears as 7 USCS Section 2131 et seq.

74) 7 USCS Section 2131.

75) APHIS, *The Animal Welfare Act Factsheet*, available at [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/fs\\_awawact.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_awawact.pdf) (viewed 27 February 2010).

that are subject to AWA licensing are pet wholesalers, pet breeders, exotic animal dealers, wild animal dealers, zoos, animal performance shows, roadside zoos, and carnivals.<sup>77)</sup>

Unfortunately, the AWA, like the ESA and CITES, is not airtight. Similar to the ESA, the AWA would not have jurisdiction over a purely intrastate sale of a tiger. The AWA defines “commerce” as trade, traffic, transportation, or other commerce that is “between a place in a State and any place outside of such State, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia”.<sup>78)</sup> Therefore, if a captive-bred tiger were sold within a state, and its transport did not involve going outside of the state boundaries, and the transaction did not affect commerce outside of the state, the AWA would not apply. Furthermore, the USDA licensing requirements do not apply to private shelters or private collections.<sup>79)</sup> According to APHIS, pets owned by private citizens are not regulated by the AWA,<sup>80)</sup> and the USDA does not regulate the ownership and care of large wild and exotic cats as pets.<sup>81)</sup>

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76) 7 USCS Section 2134.

77) APHIS, *Licensing and Registration Under the Animal Welfare Act: Guidelines for Dealers, Exhibitors, Transporters, and Researchers*, available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf) (viewed 27 February 2010).

78) 7 USCS Section 2132 (c) (1).

79) APHIS, *Licensing and Registration Under the Animal Welfare Act: Guidelines for Dealers, Exhibitors, Transporters, and Researchers*, available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf) (viewed 27 February 2010).

80) APHIS, *The Animal Welfare Act Factsheet*, available at [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/fs\\_awawact.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_awawact.pdf) (viewed 27 February 2010).

One example case illustrating the fine line of the USDA's jurisdiction involved an individual who operated an auto parts company and kept exotic animals on his business premises. In the case of *In re: Ronnie Faircloth and JR's Auto & Parts, Inc.*,<sup>82)</sup> the owner of an auto parts business kept a leopard, two baboons, and two jaguars on the premises of the business car lot. The leopard was kept in a cage next to the owner's office, the jaguars in a nearby cage, and the baboons in another cage about 40 feet further back on the property. All cages were within a chain link fence that enclosed the car lot, and the fence was about 40 feet from the road with a dirt driveway/parking lot between the road and fence. The owner stated that the animals were his "personal pets" and that he housed them on the business premises because he spent 90% of his time at the car lot and wanted his pets near him. The business did not post signs advertising that the animals were on the premises and did not charge his auto business customers to look at the animals.

The initial decision issued by the Administrative Law Judge ruled that the business owner was not an animal "exhibitor" for the purposes of the Animal Welfare Act because the economic benefit to the owner from exhibiting the animals to the public was not much more than *de minimis*, if even that, and because the business was neither in nor affected interstate commerce. The initial decision was reversed by the Judicial

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81) APHIS, *Position Statement: Large Wild and Exotic Cats Make Dangerous Pets*, Miscellaneous Publication No. 1560, available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/big\\_cat/position.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/position.pdf) (viewed 27 February 2010).

82) *In re: Ronnie Faircloth and JR's Auto & Parts, Inc.*, 52 Agric. Dec. 168, LEXSEE 52 Agric. Dec. 171, USDA Lexis 16 (1993).



*Victor*, the male at Kyoto Municipal Zoo. His enclosure is only about the size of an average American living room. Photo taken February 7, 2010.

Officer who decided that the business was involved in interstate commerce. The Judicial Officer reasoned that 1) most, if not all, of the used auto parts sold by the business were originally manufactured in a different state, 2) the parts sold by the business were used on cars and trucks that were likely to be used in interstate travel (the business was only 80 miles from the nearest state border), 3) the business had a long-distance toll-free telephone number that customers could presumably use to call the company from other states, and 4) the business accepted national credit cards to finance the purchase of their auto parts. The Judicial Officer further ruled that the owner was an "exhibitor" because he continued to keep his animals on the premises where they could be seen

by his business customers. Having ruled that the business was subject to USDA jurisdiction, the Judicial Officer imposed a \$4000 civil penalty against the animal owner and issued a cease and desist order to stop the display of the animals.

## VI. The Captive Wildlife Safety Act of 2003

As discussed above, there are loopholes in the ESA and the AWA which limit the federal government's powers to regulate home-grown tigers. For example, while the ESA prohibits the transportation of an endangered species in interstate and foreign commerce for commercial purposes<sup>83)</sup>, and the sale of endangered species in interstate and foreign commerce<sup>84)</sup>, a tiger owner could conceivably move his pet tigers across state borders, propagate them, and later sell the offspring. The Captive Wildlife Safety Act<sup>85)</sup> (CWSA) is an attempt to close the loopholes and thereby shut down the large domestic trade in large cats as pets. In the Senate Committee report regarding the CWSA, the Committee on Environment and Public Works estimated that there were thousands of large cat species being kept as pets in the United States and that this raised concerns regarding public safety as well as the welfare of the big cats.<sup>86)</sup> The committee cited the increase of sales of large cats through the internet and the problem that occurred when untrained people purchased young cats only to later learn that they could not properly handle the big

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83) 16 UCSC Section 1538 (a) (1) (E).

84) 16 USCS Section 1538 (a) (1) (F).

85) Pub. L. No. 108-191, 117 Stat. 2871 (codified at 16 U. S. C. Section 3371 et seq.).

86) Senate Report 108-172 at 2 (2003).

cat when it grew into an adult.

The CWSA amends the Lacey Act to make it illegal to import, export, buy, sell, transport, receive or acquire certain live big cats across State lines or the U. S. border.<sup>87)</sup> The Lacey Act was originally passed by Congress in 1900 as America's first significant step toward national wildlife regulation<sup>88)</sup>, and it intended to help the individual states protect their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws.<sup>89)</sup> Over the years, the Lacey Act was amended to the point where it currently also prohibits the interstate sale and transportation of certain plants.<sup>90)</sup> The CWSA amended the Lacey Act by prohibiting the interstate transport of "Prohibited Wildlife Species". "Prohibited Wildlife Species" are specifically defined as "any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species".<sup>91)</sup> (The ban on transporting Prohibited Wildlife Species is not applicable as regards to APHIS licensees, State colleges and universities, and accredited wildlife sanctuaries that care for prohibited wildlife species.<sup>92)</sup>)

The CWSA is notably severe even in the case where a pet owner simply

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87) USFWS, *Captive Wildlife Safety Act: What Big Cat Owners Need To Know*, available at [http://www.fws.gov/le/pdffiles/CWSA\\_Factsheet.pdf](http://www.fws.gov/le/pdffiles/CWSA_Factsheet.pdf) (viewed 7 June 2010).

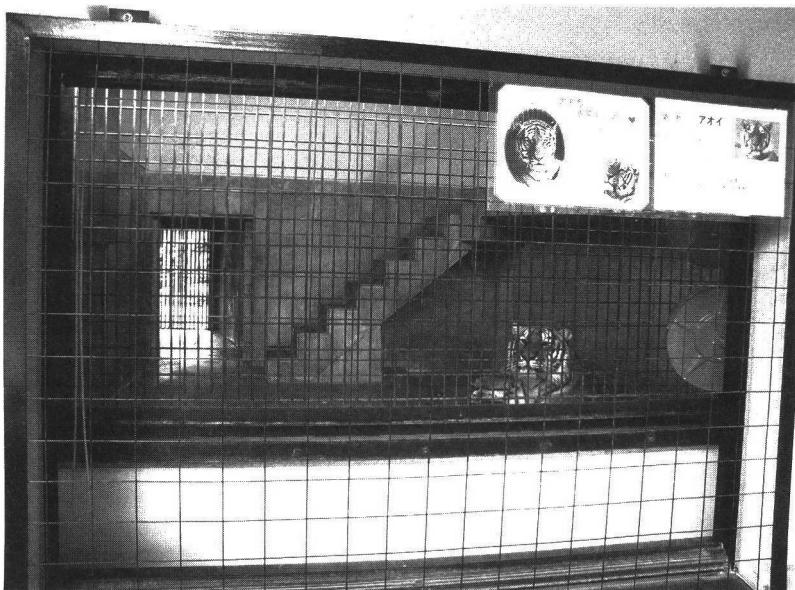
88) Stanford Environmental Law Society, *The Endangered Species Act*, 2001 at 15–16.

89) Senate Report 108–172 at 1 (2003).

90) 16 USCS Section 3372 (a) (2) (B).

91) 16 USCS Section 3371 (g).

92) 16 USCS Section 3372 (e).



*Aoi*, the female at Kyoto Municipal Zoo. Her enclosure is about the size of an average American living room. Photo taken February 7, 2010.

wants to move his own pet across state borders. The law is applicable to big cats that were owned before the passage of the law, and even bars the temporary interstate movement of a big cat for veterinary treatment.<sup>93)</sup> Since a pet owner who moves his own pet tiger could be fined up to \$100,000 and sent to prison for up to one year<sup>94)</sup>, the law serves as a very strong deterrent of the interstate movement of pet tigers.

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93) USFWS, *Captive Wildlife Safety Act: What Big Cat Owners Need To Know*, available at [http://www.fws.gov/le/pdffiles/CWSA\\_Factsheet.pdf](http://www.fws.gov/le/pdffiles/CWSA_Factsheet.pdf) (viewed 7 June 2010).

94) Ibid.

## VII. Sample state laws and cases involving captive tigers

In the previous sections, I have discussed United States federal laws affecting the private ownership of tigers as pets. In this last section, I will discuss a few examples of state level laws and cases involving tigers and the assignment of liability for accidents involving tigers privately kept in captivity.

According to the TRAFFIC Report, as of 2007, twenty-six states had laws banning the possession of tigers in private collections; sixteen states allowed individuals to keep tigers if they had a state-issued permit or registration, and nine states (Alabama, Idaho, Iowa, Nevada, North Carolina, Ohio, South Carolina, West Virginia, and Wisconsin) allowed citizens to keep tigers with no state permitting restrictions.<sup>95)</sup>

In Texas, the state that appears to have the largest number of tigers in captivity, “a person may not own, harbor, or have custody of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by an animal registration agency”.<sup>96)</sup> Tigers are specifically listed in the definition of “dangerous animals”,<sup>97)</sup> and the application for the registration must include a complete

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95) TRAFFIC Report at 15.

96) Texas Health & Safety Code Annotated, Section 822.103 (a).

97) Texas Health & Safety Code Annotated, Section 822.101 (4) (B).

identification of each animal, including information on its species, sex, age (if known), and any distinguishing marks or coloration that would aid in the identification of the animal.<sup>98)</sup> The owner must also state the exact location where the animal will be kept.<sup>99)</sup>

Texas law further requires that the tiger owner maintain liability insurance coverage for each animal with a coverage amount of not less than \$100,000 of coverage for each occurrence of damages for property damage, death, or bodily injury caused by the wild animal,<sup>100)</sup> and that owners allow inspections of the animals and their records pertaining to the animals.<sup>101)</sup> Owners must also notify the animal registration agency if they plan to move the animal,<sup>102)</sup> and also within 48 hours of any attack upon humans or any escapes.<sup>103)</sup> If a tiger escapes from the owner's premises, the owner will be liable for all costs incurred in apprehending and confining the animal.<sup>104)</sup>

In Hawaii, one of the twenty-six states that prohibits the private ownership of tigers. Hawaii's law regarding plant and animal quarantine states that the Board of Agriculture shall maintain lists of 1) conditionally approved animals that require a permit for import into the State, 2) restricted animals that require a permit for both import into the State and

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98) Texas Health & Safety Code Annotated, Section 822.104 (b) (2).

99) Texas Health & Safety Code Annotated, Section 822.104 (b) (3).

100) Texas Health & Safety Code Annotated, Section 822.107.

101) Texas Health & Safety Code Annotated, Section 822.108.

102) Texas Health & Safety Code Annotated, Section 822.109.

103) Texas Health & Safety Code Annotated, Section 822.110 (a) (b).

104) Texas Health & Safety Code Annotated, Section 822.110 (c).

possession, and 3) animals that are prohibited entry into the State.<sup>105)</sup> Tigers are included in the list of restricted animals that may be brought into Hawaii for “research by universities or government agencies”, or “exhibition in municipal zoos or government affiliated aquariums”.<sup>106)</sup> Since there is a separate list of restricted animals for private and commercial use, and since the lists are mutually exclusive, it is clear that Hawaii will not allow private “pet” tigers into the State.

Even if an individual in Hawaii somehow managed to obtain a tiger or other big cat, Hawaii’s tort laws provide great disincentives regarding the ownership of such powerful animals. Hawaii Revised Statutes Section 663-9 regarding the tort liability of animal owners in regards to incidents involving their animals states: “(t) he owner or harborer of an animal which is known by its species or nature to be dangerous, wild, or vicious, if the animal proximately causes either personal or property damage to any person, shall be absolutely liable for such damage.”<sup>107)</sup> According to this rule of “absolute liability” or “strict liability”, the animal owner may be held responsible for injuries and damages caused by his pet tiger even when he himself did not act negligently.

But even in the absence of a codified strict liability statute like the Hawaii statute, states will often recognize a common law rule of strict liability in cases involving wild animals like tigers. In the Iowa case of

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105) Hawaii Revised Statutes, Section 150A-6.2. Animal Import (2006).

106) Hawaii Administrative Rules Section 4-71-6.5 (2006).

107) Hawaii Revised Statutes, Section 663-9. Liability of animal owners (2007).

*Arnold J. Franken v. City of Sioux Center*,<sup>108)</sup> the plaintiff was injured when he attempted to pet a tiger housed in a cage and it bit him. The Supreme Court of Iowa ruled that the (common) law of Iowa, and that in most jurisdictions, imposes strict liability upon owners and harborers of wild animals. In citing the *Restatement (Second) of Torts, Section 507 (1)*, the court said the general rule was: “ (a) possessor of a wild animal is subject to the liability to another for harm done by the animal to the other, his person, land or chattels, although the possessor has exercised the utmost care to confine the animal, or otherwise prevent it from doing harm”.<sup>109)</sup> The court further added that the assumption of risk could be used as a defense to a claim of strict liability.

A similar set of circumstances produced a similar result in the Indiana case of *Scott Irvine vs. Rare Feline Breeding Center, Inc.*<sup>110)</sup> In this case, the court ruled that although Indiana’s common law recognized the strict liability rule for wild animal cases, a plaintiff’s contributory negligence and/or assumption of risk could be raised as defenses. In the Irvine case, the plaintiff was severely injured after he placed a couple of fingers into a wire enclosure and attempted to pet a male tiger.

The application of strict liability, however, appears to be limited to the animal owner. In the Washington State case of *Frobis v. Gordon*,<sup>111)</sup> the court ruled that a landlord was not strictly liable for damages caused by a

108) *Arnold J. Franken v. City of Sioux Center, Iowa*, 272 N. W. 2d 422 (1978).

109) *Arnold J. Franken v. City of Sioux Center, Iowa*, at 424.

110) *Scott Irvine v. Rare Feline Breeding Center, Inc.*, 685 N. E. 2d 120 (1997).

111) *Clara J. Frobis v. Anne Gordon*, 69 Wn. App. 570, 849 P. 2d 676 (1993).



*Senichi*, the male at Tennoji Zoo in Osaka. Photo taken on January 24, 2010.

tiger kept on the leased premises by the tenant, despite the fact that the landlord knew of the tiger's presence.

## VIII. Conclusion

While the worldwide population of tigers in the wild is rapidly decreasing, there are thousands of tigers being kept in captivity in the United States, many as pets. With respect to these pet tigers, provisions of the United States Constitution place limits upon the federal government's ability to control and monitor their ownership, and experts deem it impossible to accurately ascertain how many tigers live within the country's borders. And, while international law (CITES) and United

States federal laws (ESA, AWA, and CWSA) provide various protections for tigers and control their movement across international and state borders, these laws have loopholes when applied to tigers that are born and raised and sold within the borders of a single state.

With respect to state laws controlling the ownership of pet tigers, treatments vary, with twenty-six states banning the private ownership of tigers, sixteen states placing restrictions on their ownership, and nine states not even requiring permits. With respect to the issue of assigning liability for property damage and personal injury caused by a pet tiger, state-by-state differences in statutory law may not be as important because the common law of most jurisdictions appears to recognize “strict liability” or “absolute liability” for injuries and damages caused by dangerous wild animals such as tigers.

Considering issues of public safety, as well as the welfare of the large number of pet tigers that currently end up unwanted and/or mistreated, it is clear that there is sufficient justification for the enactment of even stricter federal and state laws controlling the keeping, breeding and movement of tigers. At the present time, there are too many tiger owners who do not have the proper training, experience, facilities, or financial resources to protect the public and at the same time provide their tigers with a safe and humanely comfortable living habitat. Proposals such as a national registration and microchip tagging of all individual animals should be seriously considered. Stricter qualification rules regarding who may be issued a license to keep a tiger could also be enacted. Unfortunately,

given state-by-state differences in politics in the United States and the varying levels to which the people in each geographical region value the personal freedom to own large cats as pets, it is highly unlikely that the United States will soon be adopting uniform laws prohibiting the private ownership of pet tigers.

When the “Year of the Tiger” again occurs in the future years of 2022, 2034, and 2046, who knows how many, if any, tigers will remain in the wild. At that time, tigers kept in captivity, including those pets that are “generic” or “hybrid”, might be the only tigers left on the planet. If at that future time, the only tigers left on earth are in zoos or in cages, it would be sad. If at that time, large numbers of the once proud tigers are still living in owner’s backyards in cramped concrete-floored pens or mud-and-feces-filled cages, it would be tragic.