NATIONAL ANIMAL LAW COMPETITIONS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
PENNSYLFORNIA

CASE NO. 1:22-cv-99999-RO

Quadruped Legal Defense
Fund,

Plaintiff,

v.

Jim's Lion and Tiger Cub Petting,

Defendant.
_______________________________________/

ORDER

This matter is before the Court on cross-motions for summary judgment. Plaintiff Quadruped Legal Defense Fund ("QLDF") and Defendant, Jim's Lion and Tiger Cub Petting ("JLTCP"), cross-moved for entry of summary judgment on standing and on the merits of Plaintiff's lawsuit under the Endangered Species Act. The Court has reviewed the motions, the pertinent portions of the record, and is otherwise fully advised, and for the reasons elaborated below denies Plaintiff's motion for summary judgment in part, grants Defendant's motion in part, and orders summary judgment to be entered for Defendant.

I. BACKGROUND

This case concerns the welfare and humane treatment of lions and tigers (“Big Cats”) residing at JLTCP. Plaintiff seeks to redress, through declaratory and injunctive relief, injuries that these animals are suffering due to the conditions under which they are confined, claiming that such injuries amount to a “take” in violation of Section 9(a)(1)(B) of the Endangered Species Act (the “ESA”), 16 U.S.C. § 1538(a)(1)(B). Plaintiff alleges that a “take” has occurred because animals are suffering “harm” and “harass[ment],” and in some instanced have been killed, in violation of the ESA Section 9(a)(1) (making it unlawful to “take” an endangered species, which is defined as, among other conduct, “to harass [or] harm”).

Specifically at issue here are JLTCP’s practices of declawing and separating Big Cats from their mothers shortly after birth. As established in the record and as the parties do not dispute, JLTCP’s primary business is exhibition of Big Cats to the public through hands-on encounters called “Lion and Tiger Cub Petting.” Decl. of Jim Houston (“Houston Decl.”) ¶ 3. Prior to December 2022, Lion and Tiger Cub Petting exhibitions involved JLTCP inviting members of the public to interact, play, and feed baby Big Cats between six and sixteen weeks of age in exchange for a twenty-five-dollar donation. *Id.*

JLTCP routinely declawed Big Cat cubs in its possession so that they could be handled more easily and safely by Lion and Tiger Cub Petting attendees, and can be handled more easily and safely by JLTCP personnel. *Id.* ¶ 6. JLTCP’s veterinarians typically use a surgical scalpel or a guillotine to declaw the cubs and then uses tissue glue to close the wound. *Id.* ¶ 12.

JLTCP also separates Big Cat cubs from their mothers, as early as one day after birth, so that the cubs are more tractable during public interaction and in general. *Id.* ¶¶ 5, 16.

Plaintiff presented expert evidence from a veterinarian practicing in New York City, Dr. Penelope Johnson. Dr. Johnson, a decades-long advocate against declawing both domestic and exotic felines, explained that declawing is a surgical procedure called "onychectomy" during which the animal's distal interphalangeal joints are amputated. Decl. of Dr. Penelope Johnson ("Johnson Decl.") ¶ 12. Declawing is an irreversible procedure that permanently removes the distal phalanx and severs nerves, ligaments, tendons, and blood vessels. *Id.* Dr. Johnson contends that declawed felines can suffer a lifetime of pain. *Id.* ¶¶ 13-15. She believes declawing likely will result in permanent lameness, arthritis, abnormal standing conformation, and other long-term complications. *Id.*

Plaintiff also offered the testimony of Ben Wilson. Mr. Wilson is the behavioral, husbandry, and welfare manager at an Association of Zoos and Aquariums ("AZA")-accredited zoo, the John Q. Smith Zoo, in Topeka, Kansas. Decl. of Ben Wilson ("Wilson Decl.") ¶ 2. He has over twenty-two years of experience training domestic and exotic cats, including every member of the big cat family. *Id.* Mr. Wilson contends that declawing causes behavioral harm to Big Cats because Big Cats are born with a set of behaviors, predispositions, and expectations, and that declawing disrupts those norms by creating different stress responses to the procedures. *Id.* ¶ 11. He attests that those responses can change a Big Cat's physiology, brain, and hormone system which in turn affects the Big Cat's ability to walk, run, jump, climb, and scratch. *Id.*

Mr. Wilson also attests that prematurely separating cubs from their mothers causes behavioral harm to Big Cats. *Id.* ¶ 8. He explained Big Cat cubs usually stay with their mothers for at least two years following birth. *Id.* ¶ 27. By depriving cubs of this time with their mothers, JLTCP, according to Wilson, have stunted the cubs' growth and ability to nurse, learn, and develop healthy behaviors, and may ultimately shorten the Big Cats' lifespans. *Id.* ¶¶ 34-42.

JLTCP did not present expert evidence. Although JLTCP's owner and operator, Jim Houston, has proffered a sworn declaration that veers haphazardly between factual and expert observations and conclusions, the Court does not credit this testimony as presenting, on its own, a dispute of fact with respect to conclusions made by Plaintiff's experts that this Court believes satisfy the standard for summary judgment. In short, this is because Mr. Houston is not an expert—for example, he does not disclose any formal education or rigorous training in Big Cat husbandry, *see, e.g.*, Houston Decl. ¶ 4—and his opinions that can only be admitted as potential expert evidence are not based on any reliable or even apparent methodology. The Court credits Mr. Houston's testimony only to the extent it speaks to facts squarely within his knowledge as a layperson.

II. LEGAL STANDARD

Summary judgment is authorized only when the moving party meets its burden of demonstrating that "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56. When determining whether the moving party has met this burden, the court must view the evidence and all factual inferences in the light most favorable to the non-moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The party opposing the motion may not simply rest upon mere allegations or denials of the pleadings; after the moving party has met its burden of proving that no genuine issue of material fact exists, the non-moving party must make a sufficient showing to establish the existence of an essential element to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrell Catrett*, 477 U.S. 317 (1986). If the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial—since, if reasonable minds might differ on the inferences arising from undisputed facts then the court should deny summary judgment. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986) ("[T]he dispute about a material fact is 'genuine,' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."). The Court must resolve all ambiguities and draw all justifiable inferences in favor of the non-moving party. *Id.*at 255.

III. DISCUSSION

Plaintiff seeks declaratory and injunctive relief, claiming that the conditions of these Big Cats' confinement and alleged injuries constitute a "take" in violation of the ESA section 9(a)(1), 16 U.S.C. § 1538(a)(1)(B). More specifically, Plaintiff argues (1) JLTCP has harmed and harassed, and in two instances killed, Big Cats by declawing them, and (2) they have harmed and harassed Big Cat Cubs by prematurely separating them from their mothers. JLTCP insists that none of its conduct violates the ESA. JLTCP maintains that, as a matter of statutory construction, the vast majority of the injuries Plaintiff complains of do not and cannot, based on the available evidence, amount to a "take" within the meaning of the ESA. Therefore, the Court must construe the term "take" as used in the ESA and apply the term, as construed, to the injuries alleged. In so doing, this Court applies recent Supreme Court interpretive guidance as to similar statutory constructions and finds convincing the interpretative framework urged by Defendant, which has also been characterized in roughly similar terms by the Eleventh Circuit in *People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142 (11th Cir. 2018) (imposing a "serious harm" threshold).

A. THE ENDANGERED SPECIES ACT

The Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. § 1531 (1988 ed. and Supp. V), contains a variety of protections designed to save from extinction species designated as endangered or threatened. *Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 690 (1995). The stated purposes of the ESA are twofold: (1) "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved" and (2) "to provide a program for the conservation of such . . . species." 16 U.S.C. § 1531(b); *see also Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 785 (9th Cir. 1995).

At the most basic level, these twin purposes are furthered by requiring that the Secretaries of Commerce and the Interior maintain a list of endangered and threatened species ("listed species") and designate their critical habitats. *See, e.g.*, 16 U.S.C. § 1533. The Fish and Wildlife Service ("FWS") administers the ESA with respect to terrestrial species under the jurisdiction of the Secretary of the Interior.

The ESA protects listed species in several ways. For example, Section 5, 16 U.S.C. § 1534, authorizes the "Secretar[ies], in cooperation with the States," *see* § 1535, to acquire land to aid in preserving listed species. Section 7 mandates interagency cooperation, requiring all "federal agencies to ensure that none of their activities, including the granting of licenses and permits, will jeopardize the continued existence of endangered species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical . . . unless such agency has been granted an exemption from the Secretary." *Babbitt*, 515 U.S. at 692 (citing 16 U.S.C. § 1536(a)(2)).

Section 9(a)(1) of the ESA makes it unlawful to import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce, any endangered species. *See* 16 U.S.C. § 1538(a)(1).

Pertinent to the controversy before the Court, section 9(a)(1) also prohibits the "tak[ing]" of any member of an endangered species within the United States, the territorial sea of the United States, or on the high seas. 16 U.S.C. § 1538(a)(1)(B), (C). The ESA defines the term "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." *Id.*1532(19).

1. Textual Construction

In determining whether Congress intended the ESA to extend to the declawing and maternal separation-related injuries evidenced in this case, the starting point is to analyze the plain meaning of the text of the statute. However, in answering this question, the Court does not "interpret the relevant words . . . in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski v. United States*, 134 S.Ct. 2259, 2267 (2014) (quoting *Maracich v. Spears*, 133 S.Ct. 2191, 2209 (2013)).

Section 9(a)(1) reads in pertinent part: "it is unlawful for any person subject to the jurisdiction of the United States to[] *take* any such species within the United States or the territorial sea of the United States." 16 U.S.C. § 1538(a)(1)(B) (emphasis added). The statutory term "take" is defined in the ESA with ten (10) prohibited acts: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." *Id.* § 1532(19).

As recognized by the Supreme Court, the proscribed conduct overlaps in some respects. For example, there is no meaningful difference between the terms "trap" and "capture"; and at first blush there is only a pedantic distinction between "wound" and "harm," the former and more narrow term involving the piercing or laceration of skin, and the latter, broader term involving a physical injury of some kind. *Babbitt*, 515 U.S. at 721 (Scalia, J., dissenting) ("[T]he word "trap" in the definition otherwise . . . adds nothing to the word "capture."); *see also Endangered and Threatened Wildlife and Plants; Final Redefinition of "Harm,"* 46 Fed. Reg. 54748 (Nov. 4, 1981) ("It is obvious that there is considerable overlap in many of these terms and it would be a fruitless and impractical exercise to attempt to define any one of these terms to the exclusion of the others so as to have no overlap of prohibited actions."). In analyzing "take" in Section 9(a)(1) of the ESA, the Supreme Court observed "[t]o the extent the definition of 'harm' may have applications that overlap with other words in the definition, that overlap reflects the broad purpose of the Act." *Babbitt*, 515 U.S. at 698 n.11.

While the ESA's purpose is "broad," *id*., construing statutory language is not merely an exercise in ascertaining "the outer limits of [a word's] definitional possibilities," *Dolan v. Postal Service*, 546 U.S. 481, 486 (2006). Rather, courts should interpret proximate statutory terms in light of one another. *Gustafson v. Alloyd Co. Inc.*, 513 U.S. 561, 575 (1995). By construing a statutory term "by the company it keeps," courts avoid giving "unintended breadth to the acts of Congress," *id*. (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)), which becomes even more pertinent when the proscribed conduct, like the term "take" in the ESA section 9(a)(1), is defined with a list of overlapping words. *United States v. Costello*, 666 F.3d 1040, 1046 (7th Cir. 2012) ("[T]hat a clause is broadly worded to stop up loopholes doesn't justify a literal interpretation that carries far beyond any purpose that can reasonably be imputed to the drafter. When a statute is broadly worded in order to prevent loopholes from being drilled in it by ingenious lawyers, there is a danger of its being applied to situations absurdly remote from the concerns of the statute's framers." (internal citation omitted)). In that regard, *noscitur a sociis* is the commonsense principle that statutory terms, ambiguous when considered alone, should be given related meaning when grouped together. *See, e.g.*, *S.D. Warren Co. v. Me. Bd. Of Env't Prot.*, 547 U.S. 370, 378 (2006) (citations omitted).

Here, the common denominators among the terms are conduct that constitute seizure ("trap," "capture," "collect"); is mortally threatening ("kill," "shoot"); or, has the potential to seize or mortally threaten the life of ("pursue," "hunt," "wound") a member of a listed species. The remaining terms "harm" and "harass" should, intuitively, have the same essential character as the eight associated terms. Or put another way, as JLTCP argues, "harm" and "harass" should be interpreted as implying the same level of "impact" to the listed species as the other eight terms denote. And, in the context of captive animals, all the applicable terms imply mortal peril.

A related statutory canon, *esjudem generis*, yields the same result. This canon holds that, if the legislature had intended general words to be used in their unrestricted sense, it would have made no mention of the particular classes—so, for example, the words "other" or "any other" following an enumeration of particular classes ought to be read as "other such like" and to include only those of like kind or character. *See, e.g.*, *In re Bush Terminal Co.*, 93 F.2d 659, 660 (2d Cir. 1938). As noted above, the more general word "harm" appears in relation to specific terms that denote mortal harm: "cause the death of a (person, animal, or other living thing)" ("kill"), The New Oxford American Dictionary (2010); "pursue an animal in order to kill or for sport" ("hunt"), *id.*; "kill or wound (a person or animal) with a bullet" ("shoot"), *id.*; and, "to follow someone or something in order to catch or attack them" ("pursue"), *id.*

In *United States v. Hayashi*, 22 F.3d 859 (9th Cir. 1993), the Ninth Circuit Court of Appeals engaged in a similar analysis of the term "harass" as used in the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §§ 1361, *et seq*. The word "harass," the Court explained, should have a symmetrical degree of harm when viewed with its associated terms. 22 F.3d at 864. Because "[t]he statute groups 'harass' with 'hunt,' 'capture,' and 'kill' as forms of prohibited 'taking,'" and "[t]he latter three each involve direct and significant intrusions upon the normal, life-sustaining activities of a marine mammal"—"killing is a direct and permanent intrusion, while hunting and capturing cause significant disruptions of a marine mammal's natural state[,]"—then to be consistent with these other terms, "harassment," to constitute a "taking" under the MMPA, must entail a similar level of direct intrusion. *Id. Hayashi* also accords with an understanding that interpreting "harass" to "involve a direct and significant intrusion also comports with a common understanding of the term 'take,' of which 'harass' is simply one form." *Id.* Again, as *Hayashi* cautions, the overarching goal of legislation like the MMPA (and the ESA) is avoiding the "danger of extinction or depletion as a result of man's activities." *Id.* (citing MMPA § 2(1), Pub. L. No. 92–522, 86 Stat. 1027 (1972) (findings and declaration of policy)).

The Supreme Court's decision in *McDonnell v. United States*, 579 U.S. 550 (2016), validates this approach. The defendant in that case, the former governor of Virginia, was charged with honest-services fraud for accepting benefits in exchange for an "official acts," *i.e.*, "arranging meetings" for a constituent, "'hosting' events," and "contacting other government officials." *Id.* at 555-56. The bribery statute required the government to identify a "question, matter, cause, suit, proceeding or controversy" that "may at any time be pending" or "may by law be brought" before a public official, as the first element of an "official act." 18 U.S.C. § 201(a)(3). Addressing "whether a typical meeting, call, or event is itself a 'question, matter, cause, suit, proceeding or controversy,'" the Supreme Court rejected the government's position that "nearly any activity by a public official qualifies as a question or matter—from workaday functions, such as the typical call, meeting, or event, to the broadest issues the government confronts, such as fostering economic development," ruling that the statutory language "do[es] not sweep so broadly." *McDonnell*, 579 U.S. at 567-68. Instead, the Court looked to "[t]he last four words in that list—'cause,' 'suit,' 'proceeding,' and 'controversy'—[which] connote a formal exercise of governmental power, such as a lawsuit, hearing, or administrative determination." *Id.* "Although it may be difficult to define the precise reach of those terms, it seems clear that a typical meeting, telephone call, or event arranged by a public official does not qualify as a 'cause, suit, proceeding or controversy.'" *Id.* That is, "[b]ecause a typical meeting, call, or event arranged by a public official is not of the same stripe as a lawsuit before a court, a determination before an agency, or a hearing before a committee, it does not qualify as a 'question' or 'matter' under § 201(a)(3)." *Id.*

Likewise, in *Yates v. United States*, the Supreme Court held that a "tangible object" as used in the Sarbanes-Oxley Act does not include a fish, even though a fish is literally a tangible object, because that term is used in association with "document" and "record," and thus refers to storage media, e.g., a hard drive. 574 U.S. 528, at 544 (2015). The Court emphasized that, while dictionary definitions "bear consideration, they are not dispositive" when context counsels a narrow reading. *Id.* at 528-29.

McDonnell and *Yates*, as relevant Supreme Court opinions, encourage this Court to construe statutory language consistent with the actual association of terms used in the relevant portion of the statute—not the most expansive possible dictionary definition of the terms in question.

Finally, now-prevailing federal agency interpretation, while only relevant as persuasive support in this context to the extent it is consistent with statutory authorizations, *see Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 406 (2024), is harmonious with the conclusion that only takes that threaten or end the life of an animal are actionable under the ESA. The FWS administers the ESA with respect to land-based species including Big Cats. The parties briefed summary judgment during the pendency of the old FWS definition that defined "harm" to mean "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 46 Fed. Reg. 54748 at 54750 (Nov. 4, 1981). But the FWS, acknowledging that its prior regulation was overly broad and inconsistent with the text of the ESA, has now rescinded that definition entirely and refrained from implementing a replacement definition in order to hew more closely to Justice Scalia's observation in *Babbitt* that the prior definition "was not even a permissible reading of the statute" because it encompassed acts or omissions that only indirectly or accidently result in injury. *See* Rescinding the Definition of "Harm" Under the Endangered Species Act, 91 Fed. Reg. 43300 (July 14, 2026) (hereinafter, "FWS 2026 Rescission"). The FWS definition of "harass," meanwhile, encompasses only "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." 50 C.F.R. § 17.3 (emphasis added). Logically, because it requires a likelihood of cognizable "injury," one cannot "harass" an animal under this definition by creating a likelihood of conditions that would not constitute statutorily-cognizable "harm."

Accordingly, this Court concludes that the proper textual interpretation of "harm" and "harass" as used to describe "take" in Section 9(a)(1) of the ESA with respect to captive animals (who, logically, cannot again be captured or seized by their present owner) is human conduct that is mortally threatening, or has the potential to mortally threaten the life of a member of a protected species. While Plaintiff argues that, even if compelled by some of the above arguments, this Court should elucidate a broader range of potential cognizable injuries, the Court declines to do so. Indeed, while Plaintiff argues that language in *Miami Seaquarium* suggests that the Eleventh Circuit did "not agree that actionable 'harm' or 'harass[ment]' includes only deadly or potentially deadly harm," 879 F.3d at 1144, this is too fine a distinction. First, the Eleventh Circuit in *Miami Seaquarium* court describes its "serious harm" gloss as intended to prevent injuries akin to "overtak[ing], captur[ing], kill[ing], or defeat[ing]," *id.* at 1147—but once categories that could only apply to conservation of non-captive animals in their natural habitats are ignored, the categories of injury left all imply mortal peril. Second, *Miami Seaquarium* preceded the Supreme Court's *Loper Bright* decision, which altered the relevance of administrative statutory interpretations. While *Miami Seaquarium* concerned a question of statutory construction rather than a regulation entitled to deference, the Eleventh Circuit's conclusion as to the precise meaning of "harm" and "harass[ment]" still relied on a too-zealous deference to a regulatory notion of "significant impairment" that is not authorized by the statutory text. *Id.* at 1149. But, to the extent Plaintiff is correct that the *Miami Seaquarium* framework, understood today, implies something meaningfully broader than the interpretive framework favored above and below—which is not how this Court understands the Eleventh Circuit's analysis—such a conclusion still fails to persuade. Notably, the Eleventh Circuit did not acknowledge the guidance provided by the contemporary Supreme Court in *McDonnell*, *Yates*, or any subsequent decisions, which counsel against substitution of capacious and overly-literal hypothesized statutory definitions—like Plaintiff's preferred reading of "harm" to refer to practically any non-de minimis injury—for novel judicially-chosen, only slightly less expansive definitions, like the Eleventh Circuit's "serious injury" postulate. In denying rehearing, the Eleventh Circuit further conceded that the panel decision merely "announc[ed] the 'threat of serious harm' rule, without defining its contours[.]" *Miami Seaquarium*, 905 F.3d 1307, 1309

(11th Cir. 2018).

2. Legislative History

This Court views its interpretation of "take" as yielded by the rules of statutory construction as dispositive. As Justice Scalia famously observed, "[w]e are governed by laws, not the intentions of legislators." *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring). Nevertheless, the legislative history accompanying the ESA provides strong supporting evidence that use of the terms "harm" and "harass" to describe a "take" were intended to encompass extinction-causing concerns: conduct amounting to a seizure of wild animals, that is mortally threatening, or has the potential to seize or mortally threaten the life of an endangered species.

The Senate Committee Report to the ESA highlighted two causes of extinction the ESA was designed to reverse: "hunting" and "destruction of natural habitat." S. Rep. No. 93-307 (1973). Senator Tunney, for instance, referenced both of these two concerns in discussing the need for providing a mechanism in the ESA through which the FWS could acquire land for endangered species' use. *Babbitt*, 515 U.S. 687, 706 n.19 (citing 119 Cong.Rec. 25669) (1973). Meanwhile, Representative Sullivan, the House floor manager in 1973, stated that the goal was to prevent habitat destruction and "capture" or "kill[ing.]" *Babbitt*, 515 U.S. at 728 (1995) (citing 119 Cong.Rec. 25669) (1973)) (emphasis added). These two causes of species extinction—habitat destruction of wild animals and predation—are also reflected in the cornerstone of the Act, Section 4, which prescribes the actual designation of a species as endangered. 16 U.S.C. § 1533(a)(1). Pursuant to the ESA and its implementing regulations, a species is threatened or endangered based on any one or a combination of the following Section 4(a)(1) factors: "the present or threatened destruction, modification, or curtailment of its habitat or range;

overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; [] inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting [the species'] existence." *Id.*

Given the foregoing, analyzing the plain meaning of "take" and its attendant verbs—harm, harass, hunt, shoot, kill, wound, capture, trap, pursue, collect—relative to the ESA's purpose and the two causes of species extinction Congress sought to counteract, it is clear that in formulating the ESA, "harm" and "harass" within the definition of "take" were intended to proscribe acts that are mortally threatening, constitute the seizure of wild animals, or have the potential seize or mortally threaten a member of a listed species. Again, once the Court puts to the side those terms that can apply to wild rather than captive animals, what is left are categories that imply mortal danger.

IV. ANALYSIS

A. Plaintiff Has Standing

The Court is always obliged to assure itself of its jurisdiction to hear a case, and hence Plaintiff's standing, before pronouncing upon other legal questions. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998). Pursuant to Article III of the United States Constitution, federal courts have limited jurisdiction, hearing only live "Cases" and "Controversies." U.S. Const. art. III, § 2. A party's standing to maintain an action "is an essential and unchanging part of the case-or controversy requirement of Article III." *Davis v. FEC*, 554 U.S. 724, 733 (2008) (citations omitted). To establish standing, the plaintiff must demonstrate that "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528

U.S. 167, 180–81 (2000). When an organization sues on its own behalf, as Plaintiff does here, it may establish an injury in fact by showing that defendants' actions caused "concrete and demonstrable injury to the organization's activities," with a "consequent drain on the organization's resources." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). An organization cannot meet the injury-in-fact requirement simply because it chose to divert resources to educate its members or challenge an unlawful action in litigation, as such efforts do not stem from any actions taken by the defendant, but rather from the organization's own budgetary choices. *See, e.g.*, *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012); *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994).

The Court finds that Plaintiff has established its standing, and so the Court proceeds to substantive merits questions. Plaintiff's Director of Roadside Zoo Investigations attests that the organization has organized public pressure campaigns against Defendant, written letters to regulators trying to convince them to investigate, monitor, and penalize Defendant under the Animal Welfare Act ("AWA"), 7 U.S.C. §§ 2131-2160, and published literature to rectify what it says is the mission-impeding public misperception that Defendant's conduct is legal. Decl. of Antonia Rogers ("Rogers Decl.") ¶¶ 6-7. She further attests credibly that all of this activity was compelled by Plaintiff's mission and Defendant's actions, and previously unplanned. *Id.* ¶¶ 3-5. As a consequence, Plaintiff credibly attests that it has been forced to divert resources away from other animal-protection projects, including other zoos. *Id.* ¶¶ 8-11. This is almost precisely analogous to injuries that the Fourth Circuit found support standing in a very similar case, *PETA v. Tri-State Zoological Park of W. Md., Inc.*, 843 F. App'x 493, 496 (4th Cir. 2021). In that case, as here, the plaintiff's injuries did not stem from litigation costs or voluntary education efforts, Rogers Decl. ¶¶ 3-5, 7, 11, but instead were premised on redress of ongoing injury caused by what it claimed to be frustration of its mission and consequent diversion of resources. *See Tri-State*, 843 F. App'x at 497.

Defendant's reliance on *Food and Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), is unavailing. In that case, the Supreme Court merely clarified that the diversion of resources for the sole purpose of furthering an organization's ideological objections to a regulated party's actions does not confer standing: "Contrary to what the medical associations contend, the Court's decision in *Havens Realty Corp. v. Coleman* does not stand for the expansive theory that standing exists when an organization diverts its resources in response to a defendant's actions." *Hippocratic Medicine*, 602 U.S. at 370. This Court does not read that decision as altering what injuries can or cannot confer standing. Both *Havens* and *Hippocratic Medicine* support the proposition that a mere "setback" to an organization's ideological interests is insufficient to establish standing. But because Plaintiff establishes injuries consisting of compulsory diversions of resources beyond those necessary to merely educate its members or pursue litigation, and because these diversions can be rendered needless—that is, redressed—by a decision in its favor granting declaratory and injunctive relief, *see Massachusetts v. EPA*, 549 U.S. 497, 525 (2007) (Plaintiff "need not show that a favorable decision will relieve his every injury"), it has met its burden to establish standing.

B. Defendant's General Practices of Declawing and Maternal Separation Do Not Violate the ESA

Plaintiff's claims do not, however, prevail on their legal merits. The plain terms of the ESA and its legislative history persuade this Court that a licensed exhibitor "take[s]" a captive animal in violation of the ESA's Section 9(a)(1) only when its conduct mortally threatens or has the potential to mortally threaten the animal's survival. Therefore, whatever this Court may think about the advisability of Defendant's conduct or the public's choice to patronize its commercial offerings, Plaintiff's evidence does not meet this threshold with respect to the vast majority of Defendant's conduct in declawing and maternally-separating Big Cat cubs—and this Court is loath to hold that Congress intended, or that the ESA requires it to conclude, that veterinary and husbandry practices that are routine in the context of domesticated cats, *see, e.g.*, Johnson Decl. ¶ 12; Wilson Decl. ¶ 13, become illegal in the context of protected Big Cats.

This is despite the Court's conclusion that Plaintiff has presented substantial expert evidence as to the physical and psychological realities of declawing and maternal separation. Rather, the Court's conclusion is compelled by the absence of evidence proffered from Plaintiff's experts or otherwise that JLTCP's conduct in declawing Big Cats, and separating them from their mothers, invariably threatens these Big Cats' existence.

The parties do not dispute that declawing involves severing these Big Cats' distal phalanx, along with nerves, ligaments, tendons, and blood vessels, and causes some degree of pain. Houston Decl. ¶ 10; Johnson Decl. ¶¶ 12-13; Wilson Decl. ¶ 10.

Nor do the parties dispute that, in more natural settings, Big Cat cubs may not wean from their mothers until around six months of age or later, and that this nursing is part of how Big Cat cubs, in more natural settings, develop health immune systems. Houston Decl. ¶ 17; Wilson Decl. ¶¶ 26-27. Again, this issue does not present a material factual dispute—JLTCP admits that it pulls every Big Cat born on at the facility from their mother, in some instances within one day of birth. Houston Decl. ¶ 5. It is also true that JLTCP admits that it engages in these practices to make handling Big Cats easier—not for any acute medical reason. Houston Decl. ¶¶ 6, 16.

But, under the ESA, that is not enough—nor should it be enough—to force this Court to enter a decision that could have significant ramifications for veterinarians and animal owners across the country. *See Miami Seaquarium*, 905 F.3d at 1310 (11th Cir. 2018) ("Surely Congress did not intend the ESA to illegalize veterinary care.") Instead, Plaintiff's experts would need to carry their burden to show that JLTCP's practices of declawing and early maternal separation would invariably place, or has placed, these Big Cats in mortal danger. They have not done so. Instead, they have established only—in expert testimony that stands unopposed—that these Big Cats exhibit certain injuries; that they have been forced, as a result of JLTCP's actions, to alter their behaviors when engaging in activities like walking, climbing, and scratching; and that concomitant stress responses from both declawing and maternal separation would have altered these Big Cats' physiology, brain, and hormone systems. *See, e.g.*, Johnson Decl. ¶¶ 19-26; Wilson Decl. ¶¶ 16-24, 29-41. All of the above fall short of actual, imminent, or invariable mortal peril. For example, Plaintiff's behavioral expert does not attest that the psychological and physiological changes he understands to be caused by maternal separation have been, or will invariably be, causes of death or mortal peril. *See* Wilson Decl. ¶¶ 25-42 (recounting conditions stemming from early maternal separation that create a "needlessly high" risk of disease or injury or have other "long-term deleterious effect[s]," or that "may ultimately contribute to premature death").

Lack of nutrients that Big Cats would take in from nursing from their mothers also does not, on its own, establish viable claims for "harm" or "harass[ment]." JLTCP proffers evidence that its staff nurses Big Cat cubs from bottles, which it understands to contain vital nutrients that support these Big Cats' immune systems, Houston Decl. ¶ 18—while Plaintiff's experts proffer no evidence establishing that such replacements for Big Cat mothers' milk is inadequate to keep cubs out of imminent mortal peril.

Plaintiff points to what it says is an analogous case decided by the Southern District of Indiana in 2020, in which an exhibitor was found liable for conduct facially similar in broad strokes to those alleged here, as persuasive authority for the proposition that declawing and maternal separation can, by themselves, constitute "harm" and "harass[ment]" under the ESA. *People for the Ethical Treatment of Animals, Inc. v. Wildlife in Need & Wildlife in Deed, Inc.*, 476 F. Supp. 3d 765 (S.D. Ind. 2020). But Plaintiff makes too much of this decision. This Court, in previously denying JLTCP's motion to dismiss, already agreed that such conduct can theoretically give rise to "take" liability. The *Wildlife in Need* decision does not speak persuasively to the summary judgment record at issue here. That court engaged in essentially no statutory interpretation—expressly "[p]utting aside whether [an interpretation consistent with this Court's understanding] is the best reading of the statute"—because it saw the post-discovery facts before it to be a ready fit for the *Miami Seaquarium* "serious injury" threshold, which is highly similar to the "mortal peril" framework elucidated above. *Id.* at 784. And in that case, the Southern District of Indiana concluded "that standard is easily met" given the evidence before it indicating that the conduct at issue "pose[d] a serious harm—in many cases a deadly one." *Id*.

The same is true of another case cited by Plaintiff, *People for the Ethical Treatment of Animals, Inc. v. Tri-State Zoological Park*, which—despite deeming an expansive category of husbandry conditions to be sources of ESA liability—disclaimed any pretense of "wad[ing] into this debate" over statutory construction given its view that "the evidence overwhelmingly demonstrates that every protected animal has been harassed, harmed, or both in a most grievous fashion" consistent with the *Miami Seaquarium* standard. 424 F.Supp.3d 404, 429 (D. Md. 2019).

It is this Court's job to apply substantively the same test to the facts before it here, and the Court's conclusion is that Plaintiff has provided no evidence that could support a genuine dispute of material fact as to whether JLTCP's conduct constitutes "harm" or "harass[ment]" of the Big Cats at issue.

The Court also agrees with JLTCP that the relationship between the ESA and the AWA lends still more support for to the conclusion that "harm" or "harass[ment]" does not encompass the conduct challenged here. The AWA aims to ensure the humane treatment of captive animals. To that end, it authorizes the Secretary of Agriculture to license exhibitors, *see* 7 U.S.C. § 2133, and to promulgate standards for the treatment of animals under their care, *see id.* § 2146. While such standards cannot, by their very nature, be dispositive for determining whether "harm" or "harass[ment]" has occurred under the ESA, they may present a persuasive data point. But as JLTCP notes, the United States Department of Agriculture has promulgated no notice-and-comment regulations under the AWA that specifically bar declawing or that mandate weaning periods of any particular duration for Big Cats. While Plaintiff in their brief references items including exhibitors being cited under the AWA for violations of veterinary care provisions for incidents of declawing, and other purportedly-supportive guidance materials, such an understanding has never been subject to formal notice and comment, and individual citations of other exhibitors not before the Court are so inherently context-dependent that the Court cannot grant them significant weight in evaluating whether or not specific husbandry practices are prohibited by the ESA.

C. Defendant's Conduct with Respect to Two Big Cat Cubs

The above analysis dispenses with almost, but not all, of the merits of Plaintiff's lawsuit. Plaintiff also points to two incidents in which Big Cat cubs died from hookworm infections after what its veterinary expert characterizes as complications after declaw procedures. Johnson Decl. ¶¶ 27-30.

This general description does not itself establish a source of ESA liability. For that, as the

Court laid out above, Plaintiff would need to establish that JLTCP actually killed cubs or is responsible for placing cubs in imminent or inexorable mortal danger. And that responsibility must be proximate. The Supreme Court noted in *Babbitt* that "Congress had in mind foreseeable rather than merely accidental effects on listed species." 515 U.S. at 700. As elaborated in a concurring opinion by Justice O'Connor, this means that ESA liability is "limited by ordinary principles of proximate causation, which introduce notions of foreseeability," excluding merely "speculative or conjectural effects." *Id.* at 712. Lower courts have consistently imposed this proximate cause element in subsequent civil litigation under the ESA. *See Aransas Project v. Shaw*, 775 F.3d 641, 656 (5th Cir. 2014) ("Proximate cause and foreseeability are required to affix liability for ESA violations."); *Adams v. Alpha Crude Connector, LLC*, 2026 WL 735133, at *4 (D.N.M. Mar. 16, 2026) ("Even if this case did, in fact, arise under the ESA, as Defendant also incorrectly claims . . . Plaintiff would have to prove liability through proximate cause. . . . As the Endangered Species Act is not a strict liability regime, Plaintiff cannot attempt to use it at the state level to impose strict liability and, therefore, the Court does not have federal jurisdiction on that basis." (internal citations omitted)).

With that in mind, the Court finds that any connection between JLTCP's conduct and eventual mortal health outcomes is just too speculative—and would implicate too many intervening environmental or other factors—to render such conduct actionable under the ESA. *See Aransas Project*, 745 F.3d at 660-62 (noting contingencies that were outside defendant's control "and often outside human control"). Plaintiff's veterinary expert, Dr. Johnson, points to nothing about these cubs' actual declawing, or Defendant's actual conduct, that proximately caused their fatal infections. Instead, Dr. Johnson highlights only generalized concerns along with what she understands to be mistaken aftercare practices—including, most notably, administration of a corticosteroid. Johnson Decl. ¶ 30 ("Additional veterinary records show this corticosteroid to have been administered to each of JLTCP's Big Cat cubs following their declawing. This corticosteroid may have been immunosuppressive, and so may have increased the virulence of any infection, which would have directly contributed to these cubs deaths."). Likewise, while Plaintiff established that declawed cubs were generally exposed to "unclean environments," it did not establish with certainty that these specific cubs were exposed to these environments *Id.* ¶ 29; *see also Ariz. Cattle Growers' Ass'n v. U.S. Fish & Wildlife*, 273 F.3d 1229, 1244 (9th Cir. 2001) (agreeing with district court that FWS failed to adequately establish an incidental taking because it did not have evidence the animal existed within the area at issue). The Court is not convinced Plaintiff has met, or could possibly meet at trial, its burden to establish that these deaths were the proximate result of JLTCP's intentional or negligent conduct. Again, the lack of any citations under the AWA against Defendant for these incidents, Houston Decl. ¶ 12, or applicable AWA statutory or regulatory provisions that would bar the conduct at issue here, is another persuasive data point.

Nor is the *Wildlife in Need* case persuasive precedent with respect to these individual deaths. Notable distinctions relating to the deaths in that case include the defendant admitting that the declaw procedures themselves were "botched," and the fact the declaw-related deaths involved administration of a "toxic" wound dressing. 476 F. Supp. 3d at 777-79. The administration of a long-acting corticosteroid as a routine component of declawing after-care does not appear to have factored into that court's decision. *Id.* at 770.

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Plaintiff's motion for summary judgment is granted in part, and Defendant's motion for summary judgment is denied in part, solely as to the issue of standing. Otherwise, because the

ESA's statutory prohibitions against "harm" and "harass[ment]" concern only conduct that is proximately responsible for killing or mortally threatening the life of an animal, and Plaintiff proffers insufficient evidence to meet that burden, the Court concludes that Defendant is entitled to summary judgment on the merits of Plaintiff's claims.