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To: Advisory Committee on Plants and Animals

From: Plant Quarantine Branch
Hawaii Department of Agriculture

Subject: Request for Review and Recommendation for Preliminary Approval of Proposed Amendments to Chapter 4-71, Hawaii Administrative Rules, "Non-Domestic Animal Import Rules", Including Amendment Banning Import of Dangerous Wild Animals for Performance or Exhibition in Circuses or Carnivals. **(Minor Revision Proposed Following Board of Agriculture Approval at its 11/24/15 Board Meeting)**

I. Introduction.

At its November 24, 2015 meeting, the Board (Board) of Agriculture gave its preliminary approval for certain proposed amendments to chapter 4-71, Hawaii Administrative Rules (HAR), "Non-Domestic Animal Import Rules." The Board of Agriculture (Board) is authorized to initiate rulemaking on its own motion pursuant to section 4-1-23, HAR, "Board of Agriculture Rules of Practice and Procedures." The primary focus of these proposed amendments is to implement Governor Ige's May 2015 directive to prohibit importation of dangerous wild animals for exhibition and performance in circuses and carnivals and, also to change the placement of: (a) the Nile tilapia, *Oreochromis niloticus*, from the List of Restricted Animals (Part A) to the chapter 4-71 List of Restricted Animals (Part B) to allow import for aquaculture production; and (b) the House Cricket, *Acheta domesticus*, from the List of Restricted Animals (Part A) to the List of Restricted Animals (Part B) to allow use as feed for insectivorous amphibians, reptiles, and birds at Honolulu Zoo.

II. Background:

At its October 28, 2015 meeting, the Board considered a Petition filed by the Humane Society of the United States (HSUS), a non-profit animal rights advocacy organization, requesting that the Board amend the List of Prohibited Animals (§ 4-71-6, HAR) (Prohibited List) to include "dangerous wild animals (such as exotic cats, bears,

primates, elephants, and crocodiles)” that the Petition stated are “routinely exploited by unaccredited and substandard breeders and exhibitors around the world and frequently brought to Hawaii for entertainment purposes.” Although the Board took no position on the substance of HSUS’s Petition, the Board denied the HSUS Petition on procedural grounds and asked the Plant Quarantine Branch (PQB) to begin an informed discussion of the issues raised by the Petition on an expedited basis. That discussion required obtaining review and comment from the technical consultants in the Board’s advisory review process who had the relevant expertise.

At the Board’s January 27, 2015, the Hawaii Department of Agriculture (HDOA), PQB presented a status report to the Board based on the Board’s Advisory Subcommittee members’ assessments of the public health and safety issues that had been raised in the HSUS Petition. PQB had essentially asked the advisory subcommittees to assess (1) whether the most recent PQB permit conditions for short-term import of the identified animals for entertainment purposes are adequate to address potential health, safety, pest, animal disease, and environmental risks, or whether these permit conditions should be made more restrictive, and (2) whether certain of the identified animals cannot be safely imported at all.

A significant majority of the advisory subcommittee member responses to PQB’s questions indicated that PQB’s current permit conditions for these performing animals are sufficient to address the potential risks of short-term import of these wild, non-domestic animals for entertainment. However, a slight majority agreed that permit restrictions will not suffice to protect public health and safety and adequately address these risks as to certain of the identified animals, but the responses did not specifically identify any such animal(s). The Board asked PQB to seek clarification on the issue, as well as obtain feedback from the U.S. Department of Agriculture, Animal Plant Health Inspection Service (APHIS) as to its role as licensor for exhibitors of these animals, and a sense of how other states have handled this issue. PQB was to report back at a Board meeting in late May 2015, and it was anticipated that the matter would be presented for Advisory Committee on Plants and Animals for review and recommendation to the Board on the matter.

On May 8, 2015, the Honolulu Star Advertiser reported that Governor Ige had agreed to the request of several animal rights advocacy groups, including the HSUS, to stop the practice of bringing wild animals to the State for circus acts or other purely entertainment reasons. HDOA understood this policy ban to extend to import of the identified wild animals for performance or exhibition in circus acts, carnivals or at the State Farm Fair, and not beyond that. HDOA PQB prepared the draft rule amendments to chapter 4-71, HAR, that were presented at the Board’s November 24, 2015 meeting to implement this policy change.

Along with the prohibition on import of certain dangerous wild animals for circus or carnival performance or exhibition, PQB included in the chapter 4-71, HAR, amendment package certain proposed list changes that the Board had previously preliminarily approved for future list amendment. These list changes included, changing the list placement of: (1) the Nile tilapia, *Oreochromis niloticus*, from the List of Restricted Animals (Part A) to the List of Restricted Animals (Part B) to allow for aquaculture production; and (2) the House Cricket, *Acheta domesticus*, from the List of Restricted Animals (Part A) to the List of Restricted Animals (Part B) to allow use as feed for insectivorous amphibians, reptiles, and birds at the zoo. Because chapter 4-71, HAR, has not been amended since 2007, certain other rule amendments that PQB considers necessary were included in the proposed rule amendment package submitted to the Board and preliminarily approved at its November 24, 2015 meeting.

III. Minor Revisions Needed.

On further review, PQB notes that some of the proposed amendments might have been better described or worded, that further minor revision is in order for the sake of clarity, and that certain omissions need to be corrected. In particular, as to the proposed import ban of dangerous wild animals for circus performance or exhibition, the language in the rule sections that list those individual species needs to be corrected and clarified as to the uses for which these animals may continue to be imported, i.e., commercial filming and exhibition in government zoos. (See ATTACHMENT A, the relevant pages of the Restricted Lists under section 4-71-6.5, HAR, that show the affected dangerous wild species with revised descriptions of the prohibition or restriction, as applicable.) In addition, certain new text in section 4-71-6.5(f), HAR, regarding transfer of possession of restricted list and unlisted animals, was not identified as new text by underlining, a Ramseyer format requirement for new text in amendments. Also, certain text currently in section 4-71-7, HAR, regarding bond for certain animals was inadvertently omitted from the rule amendments as presented and must be restored. PQB will address these corrections at the Advisory Committee's meeting. Further, PQB would like to add the Grey Wolf, *Canis lupus*, and the Red Wolf, *Canis rufus*, (currently prohibited by virtue of being unlisted) to the Prohibited List. To address this situation, PQB requests the Advisory Committee's review and recommendation on the proposed chapter 4-71, HAR, amendments preliminarily approved by the Board, as revised in minor part by PQB in this submittal. Upon the Advisory Committee's favorable recommendation, the proposed rule amendment package, with the requested minor revisions, will be re-submitted to the Board for approval at its next meeting and thereafter, processed for submission to the Governor for approval to proceed to public hearing.

IV. The proposed amendments to chapter 4-71, HAR, will accomplish the following:

1. Establish a definition for “dangerous wild animals” as non-domestic animals that are capable of causing significant risk to animal and public health and safety in the absence of adequate containment measures and safeguards. Section 4-71-2, HAR.
2. Prohibit the importation of dangerous wild animals for exhibition or performance in carnivals and circuses, but continue to allow their import for commercial filming for television or movies, or for exhibition or performance in government zoos or zoological parks. Section 4-71-3, HAR.

Under the Restricted List (Part A) and (Part B) entries for these animals, the initially proposed language read, “prohibited for short-term exhibition or performance except for commercial filming or exhibition in government zoos). This is not clear. The revised text would read: **“Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5.”**

3. Clarify that violation of permit conditions may result in citation or in cancellation of the permit, or both. Section 4-71-3, HAR.
4. Add the Grey Wolf, *Canis lupus*, and the Red Wolf, *Canis rufus*, which are currently prohibited by virtue of being unlisted, to the List of Prohibited Animals under section 4-71-6, HAR. (revised)
5. The following changes are proposed under section 4-71-6.5, HAR:
 - a. Allow government agencies to import animals on the List of Conditionally Approved Animals.
 - b. Clarify that, in addition to universities and government agencies, other institutions may import restricted list animals for research, and that universities and government agencies may import restricted list animals for medical and scientific purposes as well as for research, as determined by the Board of Agriculture (Board).

- c. Clarify that permits may be approved by the chairperson, as well as by the chief and Board, as specified by rules.
- d. Provide that animals on the List of Restricted Animals (Part B) may be imported for use by government agencies.
- e. Clarify that site approval is required prior to the issuance of any permit issued for import of animals on the restricted lists and unlisted animals.
- f. Clarify that the transfer or sale of restricted list animals or unlisted animals under permit may be allowed if not inconsistent with the permit, provided the proposed transferee can satisfy the conditions for transfer and obtains a permit for possession. (The current language omits unlisted animals, in part.)
- g. Delete Nile tilapia, *Oreochromis niloticus*, from the List of Restricted Animals (Part A) and add this fish to the List of Restricted Animals (Part B) to allow import for aquaculture production.
- h. Delete House Cricket, *Acheta domestica*, from the List of Restricted Animals (Part A) and add this cricket to the List of Restricted Animals (Part B) to allow import as feed to insectivores, such as amphibians, reptiles, and birds.

V. Additional Bases for Prohibition or Restriction of Import.

Among the minor revisions PQB is proposing is a clarification regarding additional criteria for prohibiting or restricting import of non-domestic animals. In the proposed amendment to section 4-71-1, Objectives, and section 4-71-5, Notice of quarantine, PQB proposes to slightly revise the text, as submitted to the Board, to clarify that, HDOA may consider risk to animal or public health and safety as a basis for prohibiting or restricting the import of a non-domestic animal. PQB proposes to revise the initially proposed language in those rule sections accordingly, as shown below.

Initial:

§4-71-1 Objective. The objective of this chapter is to implement the requirements of chapter 150A, Hawaii Revised Statutes, by restricting or prohibiting the importation of specific non-domestic animals that are detrimental to the agricultural,

horticultural, and aquacultural industries, animal or public health and safety, natural resources and environment of Hawaii.

Revised:

§4-71-1 Objective. The objective of this chapter is to implement the requirements of chapter 150A, Hawaii Revised Statutes, by restricting or prohibiting the importation of specific non-domestic animals that are detrimental to the agricultural, horticultural, and aquacultural industries, natural resources and environment of Hawaii, **and on the basis of associated risks to animal or public health and safety.**

Initial:

§4-71-5 Notice of quarantine. The board finds that there exists serious danger to the agricultural, horticultural, and aquacultural industries, animal or public health and safety, natural resources, and environment of Hawaii by the uncontrolled introduction of feral and other non-domestic animals.

Revised:

§4-71-5 Notice of quarantine. The board finds that there exists serious danger to the agricultural, horticultural, and aquacultural industries, natural resources, and environment of Hawaii, **and risk to animal or public health and safety,** by the uncontrolled introduction of feral and other non-domestic animals.

VI. Import for Government Use

As preliminarily approved by the Board, the chapter 4-71, HAR, amendments expand the purposes for which animals on the List of Conditionally Approved Animals and the List of Restricted Animals (Part B) to include government use. Section 4-71-6.5(b), HAR, currently allows the import of animals on the List of Conditionally Approved Animals for individual possession, businesses, or institutions, but does not address import by government. Section 4-71-6.5(b) allows government agencies to import animals on the List of Restricted Animals (Part B) for the same purposes for which government may import animals on the Restricted List (Part A), i.e., research by universities or government agencies, exhibition in municipal zoos or government-

affiliated aquariums, or other purposes specified in chapter 4-71, HAR. The absence of provision for import of conditionally approved and restricted list animals for a broad range of government purposes appears to have been an oversight when the rule chapter was adopted. It was envisioned that these lists would be amended more frequently than has actually been feasible. Allowing government agencies to import animals on the List of Conditionally Approved Animals or the List of Restricted Animals (Part B) for government use beyond the purposes currently described in section 4-71.6.5, HAR, as determined appropriate by the Board, is a logical expansion that provides government the flexibility to carry out important government functions and responsibilities in the public interest. PQB has seen from the example of the House Cricket now being proposed for list amendment to allow use as feed for certain insectivorous zoo creatures that greater flexibility is needed, often on short notice, to accommodate proper government uses and that failure to provide that flexibility can leave government unable to carry out its essential functions, to the detriment of the public interest. Proper government uses of animals on the Restricted B list could range from education, conservation, or even to national security. An injured monk seal (Restricted List (Part B)) from the open ocean beyond the State's 3 mile seaward boundary would require an import permit for entry into the State for treatment in the State by a government agency. Water quality testing by the Hawaii Department of Health requires import of certain fish and could require use of fish on the Restricted List (Part B). There may be other Restricted List (Part B) animals that the State would want to import for state conservation programs. It is not possible to foresee all the particular uses for which government may need to import particular animals, but such imports would need to be in compliance with federal, state, and municipal laws, and would be subject to the Board's determination in the first instance that the use is appropriate and that permit conditions are established sufficient to address any associated risks.

PQB proposes a minor revision to the proposed amendment to section 4-71-6.5b(3), HAR, to replace the initially proposed term "government " with "government use," as shown below, in relevant part, in bold text.

...

- (b) Pursuant to the requirements of subsection (a) herein, the introduction of animals on the lists of conditionally approved or restricted animals, **including dangerous wild animals,** is allowed as follows:
- (1) Animals on the list of conditionally approved animals, for individual possession, businesses, **government agencies,** or institutions;
 - (2) Animals on Part A of the list of restricted animals, for research, **medical or scientific purposes as determined by the board,** by universities, [or] government agencies, **or other institutions**

- approved by the board, for exhibition in [municipal] government zoos or government-affiliated aquariums, [for other institutions for medical or scientific purposes as determined by the board], or for other purposes as specified in this chapter; and
- (3) Animals on Part B of the list of restricted animals, for the purposes described in subsection (b)(2) herein or for government use, or private and commercial use, including research, zoological parks, or aquaculture production, except that animals in the order Primates shall not be allowed for import or possession for private or commercial use other than for purposes described in subsection (b)(2) or for primate sanctuaries, as determined by the board.

PQB wants to point out that in section 4-71-6.5(b), HAR, of the proposed rule amendments submitted to the Board, the term “municipal” zoos is being replaced with the term “government” zoos. The term “municipal” applies to county government or lower subdivisions of county government. Traditionally, and in Hawaii, zoos have been under county jurisdiction. However, the broader term “government” would include federal, state, or county government and is preferable in the event the State would want to set up and operate a zoo.

VII. Staff Recommendation

Based on the Board's preliminary approval of the proposed amendments to chapter 4-71, HAR, and the above discussion in support of minor revisions to the proposed amendments, PQB requests the Advisory Committee's favorable recommendation to the Board on the proposed chapter 4-71, HAR, amendments preliminarily approved by the Board, as revised in minor part by PQB, including the affected animal lists, in this submittal. Upon the Advisory Committee's favorable recommendation, the proposed rule amendment package, with the requested minor revisions, will be re-submitted to the Board for approval at its next meeting and thereafter, be processed for submission to the Governor for approval to proceed to public hearing.