

March 27, 2006

By Fedex Mail

Mr. Alexandar L. Hoskins, President and Chief Executive Officer
Philadelphia Zoo
3400 West Girard Avenue
Philadelphia, PA 19104-1196

Re: Notice of Violations of the Endangered Species Act

Dear Mr. Hoskins:

On behalf of In Defense of Animals (“IDA”), its officers, and Ms. Marianne Bessey, we hereby provide notice pursuant to Section 11(g) the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), of the Philadelphia Zoo’s (“Zoo”) ongoing violations of the ESA. 16 U.S.C. § 1538(a)(1)(B). IDA is an international animal protection and advocacy organization dedicated to ending the exploitation and abuse of animals through educational efforts, cruelty investigations, and grassroots activism. Marianne Bessey is a member of Friends of Philly Zoo Elephants, and for the past year has been actively monitoring the welfare of an endangered Asian elephant named Dulary, as well as three African elephants, who all live at the Zoo.

As detailed in this letter, the Philadelphia Zoo is violating the ESA’s prohibition on the “take” of endangered species by confining Dulary in a concrete barn since August 2005, providing her little access to outdoor exercise, and absolutely no direct interaction with any Asian elephants. Confining Dulary in this manner has had a visible impact on Dulary’s well-being, and, thus, both “harm[s]” and “harass[es]” Dulary within the meaning of the ESA, and is inconsistent with the Animal Welfare Act, 7 U.S.C. §§ 2131-2159, as well as accepted husbandry guidelines for

elephants established by the American Zoo and Aquarium Association. Guide to Accreditation of Zoological Parks and Aquariums (2006) (“AZA Guidelines”).

A. The Endangered Species Act

The Endangered Species Act and its implementing regulations prohibit the “take” of endangered species, including captive-bred wildlife. 16 U.S.C. § 1538(a); 50 C.F.R. § 17.21. The ESA’s prohibition of the “take” of endangered species extends to activities that both “harm” and “harass” the animals. 16 U.S.C. § 1538(a). The U.S. Fish and Wildlife Service (“Service”) defines “harm” to mean an act “that actually kills or injures wildlife.” 50 C.F.R. § 17.3. The Service defines “harass” to mean an “intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” *Id.* The applicable regulations further provide that captive wildlife must be maintained under “humane and healthful conditions,” 50 C.F.R. § 13.41, and that “[a]ny person holding a permit . . . must comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity,” 50 C.F.R. § 13.48, including the Animal Welfare Act.

B. Since August 2005, Dulary Has Been Sequestered In A Concrete Barn, Consistently Denied Access To The Outdoors For Most Of The Day, And Forced To Share Living Quarters With African Elephants Who Threaten Her Health And Well-Being.

According to Bessey and other reports, Dulary is the only Asian elephant currently kept at the Philadelphia Zoo. Even though accreditation guidelines for zoos and other exhibitors instruct that Asian and African elephants should not be placed together because of a risk of transmitting diseases, as well as problems with “dominance and aggression,” AZA Guidelines at 58, until recently, Dulary shared a 1/4 acre of land with three African elephants. Not unexpectedly, therefore, in August 2005 one of the African elephants brutally gored Dulary, severely injuring one of her eyes. The Zoo then isolated Dulary from the African elephants in a concrete barn. *See* Julie Stoiber, *Zoo Puts Pachyderm Under Cover*, PHILADELPHIA INQUIRER, Oct. 14, 2005, at B1 (Attachment 1).

According to Bessey and other reports, since this incident, Dulary spends most of her days in an individual stall in the concrete barn, separated from the African elephants. The barn has entirely concrete floors, and provides Dulary little access to daylight or the natural elements. While the African elephants are permitted to roam the outdoor area for most of the day, according to eyewitness reports, Dulary is frequently only allowed to exercise outdoors for approximately 45 minutes a day during a brief window of time when the Zoo brings the African elephants inside the barn so that Dulary may exercise outside without threat of further injury. On several occasions, Zoo staff have informed Bessey that Dulary was not able to exercise outdoors at all on that particular day.

In addition, Dulary continues to be completely denied the ability to socialize with any Asian elephants. This is despite the fact that Asian elephants are known to be extremely social creatures that live in complex matriarchal social groupings. For this reason, the AZA accreditation guidelines instruct that zoos should “make every effort to maintain elephants in social groupings,” and that it is “inappropriate to keep highly social female elephants singly.” AZA Guidelines at 57. Nevertheless, for years the Zoo kept Dulary with a herd of African elephants, despite the known risk of aggressive behaviors and disease transmission, and is now isolating Dulary in the concrete barn.

According to Bessey and other reports, in the evenings the Zoo brings the three African elephants inside the barn, and confines these elephants in stalls alongside Dulary. Although the stalls may prevent Dulary from having direct contact with the African elephants, the close confinement of these animals poses a real risk of disease transmission between the Asian and African elephants – one of the reasons that the AZA instructs zoos not to house Asian and African elephants in the same enclosures. In fact, the AZA Guidelines explain that certain viruses that are endemic to one of the species can be “fatal” to the other. AZA Guidelines at 58.

For at least six months now, Dulary has lived in these deplorable conditions – denied regular access to the outdoors, forced to stand on concrete floors for most of the day, and isolated from any other Asian elephants. Although the Zoo contemplated expanding its elephant exhibit to provide the animals more space, these plans were rejected by the Zoo’s Board of Directors in fall of 2005, and we understand that the Zoo does not have concrete plans to improve conditions for Dulary or to move her to a better location, such as an elephant sanctuary where she could be provided acres of land on which to roam and the ability to live in a herd of Asian elephants. See Gloria Campisi, *Group Trying to Free the Elephants*, PHILADELPHIA DAILY NEWS, Dec. 15, 2005 (Attachment 2). In all likelihood, therefore, Dulary will continue to be subjected to these unfortunate conditions.

Tragically, Dulary could immediately be provided better conditions if the Zoo would approve her transfer to the Elephant Sanctuary in Hohenwald, Tennessee. The Elephant Sanctuary is the nation’s largest natural habitat refuge for Asian and African elephants, and provides animals approximately 2700 acres of land on which to live out their lives. We understand that Carol Buckley, the head of the Elephant Sanctuary, has already extended an offer to the Zoo to transport Dulary to the Sanctuary at no cost to the Zoo. Yet, inexplicably, the Zoo has not pursued this option. See Letter from James F. Kenney, Philadelphia City Councilman, *A Plan for the Elephants*, PHILADELPHIA DAILY NEWS, March 9, 2006 (Attachment 3).

This conduct violates the “take” prohibition of the ESA, because it “harm[s]” and “harass[es]” Dulary. In addition, this conduct violates the Service’s regulations, because it is not “humane” or “healthful,” and is flatly inconsistent with accepted husbandry practices for the care of elephants in captivity. This conduct also fails to satisfy even the minimal requirements of the Animal Welfare Act and its implementing regulations, which require that animals be provided

sufficient space to make normal postural and social adjustments “with adequate freedom of movement,” that facilities be constructed of “such material and of such strength as appropriate for the animals involved,” and that animals “shall not be housed near animals that interfere with their health or cause them discomfort.” 9 C.F.R. §§ 3.128, 3.125, 3.133.

For all of these reasons, subjecting Dulary to these conditions constitutes an unlawful “take” under the ESA and its implementing regulations, by compromising her fundamental biological, social, psychological, and habitat needs – *i.e.*, the ability to live among a herd of her own animals, exercise in the outdoors, and avoid debilitating and life-threatening disease and injury.

Accordingly, we hereby provide notice to the Philadelphia Zoo of its violations of the ESA, and urge the Zoo to immediately rectify these substandard living conditions for Dulary by sending her to the Elephant Sanctuary in Tennessee, where she can be provided the space and social interaction that she so desperately needs. Our clients stand ready to assist you in any way possible with this endeavor, and would be happy to meet with you to discuss this further, at your convenience.

We very much appreciate your attention to this matter.

Sincerely,

Erin M. Tobin

Katherine A. Meyer

cc: Gale Norton, Secretary, Department of the Interior
Dale Hall, Director, Fish and Wildlife Service