



May 19, 2011

The Honorable Cass Sunstein
Administrator
Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: U.S. Fish and Wildlife Service's "Injurious" Findings with
Respect to Nine Species of Snakes under the Lacey Act

Dear Administrator Sunstein:

The Pet Industry Joint Advisory Council (PIJAC) submits herein its comments regarding the pending determination by the U.S. Fish and Wildlife Service to list nine species of large constrictor snakes as injurious wildlife under the provisions of the Lacey Act.

PIJAC is a national trade association representing all segments of the pet industry: importers/exporters, animal breeders, wholesale distributors, product manufacturers, retail outlets, affiliated hobby organizations, individual hobbyists, and pet owners. PIJAC is the largest non-profit trade association representing the pet industry in the United States on large animal issues. Our members serve the 63% of U.S. Households that care for and maintain a wide variety of animals, including the species proposed for listing under the Lacey Act.

PIJAC has participated at each stage of the listing process and has submitted detailed comments in response to the Notice of Inquiry and the subsequent Proposed Rule, the Initial Regulatory Flexibility Analysis (IFRA), the Draft Economic Analysis, etc. In each response, PIJAC raised serious concerns regarding the adequacy and accuracy of those documents and the underlying processes. PIJAC also prepared a brief summary of the USGS Risk Assessment, even though the public was not afforded an opportunity to officially respond to a core document relied upon by the Service as an informational resource in reaching its conclusions.

PIJAC contends that the process is inconsistent with basic tenants governing development and reliance upon risk assessments/risk analysis in the rulemaking process. Nor is it consistent with the presidential directives enunciated in Executive Order 13563, dated January 18, 2011, or fulfill, the requirements of the Regulatory Flexibility Act (5 U.S.C. Sec. 603).

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The pending listing demonstrates is the underlying problems when listing a species under Lacey, an antiquated law in a modern, globalized economy. This is particularly true when dealing with species in which significant populations are commercially present within the United States and are part of an extremely diverse and growing industry. Moreover, assertions as to impacts have been grossly exacerbated with statements that the species could impact one-third of the Nation when scientific indicators and empirical data shows the impact of one or two species is and most likely to be extremely regionalized, primarily in Florida which has implemented a management strategy which includes strict regulatory mechanisms to control possession and trade in these species.

PIJAC contends that the Service has failed to adequately analyze the adverse economic impacts of this listing, specifically upon small businesses. Rather than conduct a credible economic survey, the Service appears to have hand-picked selected pieces of information from which it extrapolated numbers to indicate the size and scope of the trade, the economic impacts, etc. Having “no time for a survey of the industry to determine the financial effects of the declaration of injurious,” the Service resorted to supposition rather than conducting any semblance of a balanced study to meet an apparent internal deadline to list.

Interestingly, the USGS did not reach out to industry or other stakeholders possessing the nine species for data or clarification of data previously submitted in response to the Notice of Inquiry. Yet it appears that the USGS was communicating with members of the humane and environmental non-governmental communities. PIJAC, in its submissions, made it abundantly clear that its data was not conclusive; that it was merely a small sample or the “best information available” and far greater analysis was needed. To the best of PIJAC’s knowledge, no attempts were made to communicate with the user community, possibly because the end result had been predetermined and the Service desired to forgo time consuming and costly steps historically conducted when listing species under the Lacey Act.

On several occasions PIJAC offered to work with the Service to produce a credible economic impact study. Most of the species in question have never been established in the US and there is very limited distribution data for the two species that are in southern Florida. Thus, there is absolutely no need for a rush to listing determination. Given the status of the US economy, we believe that it is pertinent for the Federal government to make all efforts to understand the entirety of the costs-benefits equation as it pertains to the listing of these nine species.

Quite simply, the Service does not currently possess the requisite information needed to conduct and produce a credible IRFA analysis as required by the Regulatory Flexibility Act. In preparing the IFRA, the Service ignored and/or used incomplete information submitted in response to the Service’s 2008 Notice of Inquiry; thereby grossly underestimating the scope and impact of the proposed listing. As a result, the Service’s analysis is not complete, reliable, or a convincing analysis of the impact of the proposed decision on small businesses involved in the importing, captive breeding, and trade in the nine species encompassed in the proposed rule.

Throughout the Proposed Rule and the underlying documents, including the 302-page USGS “Large Constrictor Risk Assessment,” it is abundantly clear that the Service lacks basic information about constrictor snake imports, commercial and non-commercial breeding, and/or the domestic and foreign retail markets. The Service admits (in several documents) that it lacks

information as to who sells the nine species, where and how they are marketed and sold, as well as the diverse scope of ownership. The bottom line is clear – the Service has little to no knowledge of the size of the U.S. captive breeding community and/or the retail market for the nine species. In response to the Notice of Inquiry, the Service was provided certain data, which by the submitters own admission was their best estimate that indicted ranges and was incomplete. PIJAC offered at that time to work with the Service to seek better data via surveys and other approaches. The IFRA as well s the Draft Economic Analysis dated March 1, 2010 highlight the stark admission that much needed data are non-existent:

“...we do not know where these breeders or wholesalers are located nor do we know where the snakes are shipped after purchase. Furthermore, we do not know the business profiles of these entities.” (Draft Economic Analysis, p. 12)

“...data pertaining to interstate shipments and business profiles to determine the percent of revenues impacted by the proposed rule are currently unavailable.” (IFRA, p.3)

Moreover, the Service has not attempted to find this information at the time the IFRA was written and admits that “the snake market is below the commerce data radar with no time for a survey of the industry to determine the financial effects of the declaration of injurious.” (IRFA, p.3) Was there “no time” to conduct a much needed survey driven by the pressure to adopt the declaration of injurious as soon as possible at any cost?

Equally revealing is the fact that the USGS report concluded that there is no credible source for such information and pointed out that in fact the USGS neglected to approach/work with the credible sources, such as industry trade associations, in order to obtain this information.

What is more incredible is when faced with a lack of information the Service employs baseless assumptions to estimate the information it admittedly lacks. For example, the IFRA relies upon supposition and extrapolations to estimate the numbers of importers of the nine species.

The Service ignored or misapplied information that it was given in submissions in response to the Notice of Inquiry. PIJAC, in its submission, noted that the data as to the numbers of breeders, both commercial and noncommercial (primarily hobbyists selling over the Internet), is unknown. PIJAC provided a conservative estimate based on those producing snakes for the retail pet store trade, not sales via hobbyist shows, the internet, or other direct sales outside the retail store channel. Nor did any of PIJAC’s data address the multiple points of sale of animals, animal accessories and food, or export trade in captive bred specimens.

Thus, the Service’s analysis fails to deal with the large number of snake businesses that will be impacted by declaring the nine species as “injurious.” They omit PIJAC’s estimates of the numbers of retailers in the United States, such as:

“10 importers, 50 distributors, 5,100 retailers, 25 hobbyist show promoters hosting between 350-400 reptile shows in the US annually, and 2,000-5,000 individual hobbyists.” (PIJAC Notice of Inquiry submission, p. 3)

“Individual hobbyists often specialize in a small number of species/subspecies and may gross sales in the \$10,000s for specific color morphs or locality-based varieties.” (PIJAC Notice of Inquiry Submission, p. 28)

The Service concentrates only on snake retailers, ignoring snake wholesalers and intermediaries mentioned in the submissions:

“Gross revenue per company for the sale of species and subspecies of Python, Boa, and Eunectes is highly variable. – depending on whether or not the company focuses on wholesale or retail, the size of the operation, what species/subspecies are involved, and if the focus is on a) imported or US bred animals and b) normal (“wild type”) specimens or color morph/locality-specific varieties.” (PIJAC Notice of Inquiry Submission, p. 3)

Ignoring wholesale operations reduces the volume of snake sales, because the same snake is often sold multiple times in the chain of distribution to its final owner.

The Service also ignores pricing premiums for snakes, particularly for color morphs, dwarfs, etc. PIJAC’s tables (PIJAC Notice of Inquiry submission at pgs. 11-15) detail the pricing and import volumes for Pythons, Boas and Anacondas. These tables show price premiums given for snakes of different morphological features and that were taken from different localities. These pricing premiums reach up to 60 times the price of a “normal” snake.

Yet, the Service does not factor pricing premiums into its total sales estimates. For example, for the *Boa constrictor* a few sales of *imperator* could considerably increase the estimated total sales for boa. Since PIJAC’s earlier submissions, a PIJAC survey revealed that the sales of *Boa constrictor constrictor*, a common pet store snakes, approximates 100,000 animals annually.

The IFRA fails to provide any data or even recognize the economic value of ancillary sales that include, but are not limited to, the acquisition of caging, habitat accoutrements, food, reptile care supplies, etc. Ancillary product sales for the nine species should not have been ignored. The only way to sufficiently generate reliable survey data before engaging in extrapolations mandates conducting a statistically justifiable survey – something the Service chose not to properly conduct.

PIJAC’s identification of inadequacies is not unique. The Small Business Administration’s (SBA) Office of Advocacy found in its letter to the Secretary of Interior dated May 10, 2011 that:

- The Service failed “to provide an accurate analysis of the economic impacts of the proposed rule on small entities.”
- The Service failed to “properly identify the small entities directly affected by the rule” by not identifying and analyzing the myriad stakeholder groups involved (e.g. transport companies, reptile related product manufacturers, food suppliers, veterinarians, reptile shows, zoos, educational programs, scientific/biomedical research).

- The Service failed to “analyze with any specificity the magnitude of the economic impacts this rule will have on small entities that engage in the interstate sales of live snakes.”
- The Service failed to “discuss significant alternatives...and has not provided the public with an opportunity to comment on such alternatives” as provided for under the RFA.

When it became evident that the Service was not conducting an adequate economic analysis, USARK took on the task of having an economic analysis conducted by an independent economic firm Georgetown Economic Services, LLC. The final Report is being submitted to OIRA today.

Inasmuch as the proposed rulemaking is neither mandated by law or regulation at this time, PIJAC believes that such policy determinations should be based on strict compliance with the analytical process normally afforded such prohibitions. Such a decision should be based on a thorough, transparent risk analysis not a controversial document characterized as a scientific risk assessment, an assessment not subjected to public comment normally afforded such activities.

In EO 13563, President Obama reaffirmed the policies enunciated in EO 12866 and announced new provisions aimed at requiring federal agencies to assess the necessity and effectiveness of existing as well as new regulations including considering certain “principles” when drafting rules. He also stated that adherence to these principles would ensure that the regulations “protect public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness, and job creation..”

The President went on to note that to reach those goals, rule making proponents “must allow for public participation and an open exchange of ideas...” as well as “identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.” In ascertaining its conclusions, the proponent “must take into account benefits and costs, both quantitative and qualitative.”

The Service’s proposal ignores the basic tenants of the EO in numerous ways. Most startling is the questionable objectivity and scientific integrity of the underlying risk assessment document, a document which was hardly presented in an “open format” with stakeholder input or published with an opportunity for meaningful public comment. The public has been denied the opportunity to investigate the quality and scientific integrity of the document in conformance with the Information Quality Act and the Administrative Procedures Act standards. PIJAC also believes that OMB’s standards for conducting risk assessments and peer review were not followed.

Nor do we believe that the process conforms with standards advocated by the National Academy of Sciences or the Environmental Protection Agency when conducting a Risk Analysis of which the Risk Assessment is only one component. Science, management and socio-economic factors should not be part of a science-based Risk Assessment. The differentiation of the roles of the risk assessors and the risk managers appear to be blended in this instance.

While USGS failed to reach out to industry to obtain more relevant economic data under the guise it was maintaining its scientific independence and integrity, the Service failed to expend

the time to seek out credible and reliable economic data so it could make “a reasoned determination that [the rule’s] benefits justify its costs.” EO 13563. The Service does not attempt to quantify the benefits or negative impacts of prohibiting trade in the tartgeted species. Early indications of the pending rule demonstrate its impact of the market. Prices have crashed; some breeders have or are preparing to euthanize animals in anticipation of a foregone conclusion, a conclusion based upon the handling of the entire listing process by what is perceived as a less than open and objective process.

We encourage OIRA to carefully review the extensive record and the processes utilized by the Service in formulating its decision to ensure that the Service has followed the not only the Administrative Procedures Act, the RFA, OMB standards, but also the principles set forth by President Obama’s regulatory policies. The process followed in this instance does not reflect informed public involvement and comment, scientific integrity, or the dynamic interaction needed between the regulators, the regulated communities, and the general public in achieving a regulatory mechanism that properly addresses issues associated with specimens of species already within the United States.

We appreciate the opportunity of addressing this issue with the OIRA. As is evident from our comments, PIJAC submits that the Service’s proposal fails to conform with rulemaking standards and policies in many areas. Please do not hesitate to contact PIJAC for additional information.

Respectfully submitted,
Pet Industry Joint Advisory Council


Marshall Meyers