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May 11, 2010

U.S. Fish and Wildlife Service
Division of Policy and Directives Management
Attn: Docket No. FWS-R9-FHC-2008-0015
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

RE: **Docket No. FWS-R9-FHC-2008-0015**

Dear U.S. Fish and Wildlife Service,

The United States Association of Reptile Keepers (USARK) submits the following comments on the proposed federal rule submitted by the U.S. Fish and Wildlife Service (“the Service”), adding nine species of non-native snakes to the list of “injurious reptiles” under the Lacey Act.

USARK is a science and education based advocacy organization that promotes the responsible private ownership of, and trade in reptiles. Our goal is to facilitate cooperation between government agencies, the scientific community, and the private sector in order to produce policy proposals that will effectively address important husbandry and conservation issues. The health of the animals, public health & safety, and maintaining ecological integrity are our primary concerns.

USARK is OPPOSED to this proposed rule and encourages the Service to pursue alternative measures outside of the regulatory framework of the Lacey Act.

Simply by working cooperatively with various State Fish and Game Departments, the Service will gain firsthand knowledge about the regulatory measures that are currently in place among key States. These existing measures are effectively regulating public safety, ownership and the commerce of non-native reptile species. Ongoing efforts are successfully providing sensitive regional ecosystems, like the Everglades, significant protection from the introduction of the 9 species of snakes included in the proposed rule. USARK recommends that the Service abandon its draconian approach and put forth an alternative measure that compliments ongoing efforts by state and local governments.

Specific to the proposed rule, USARK offers the following comments and analysis:

The Proposed Rule Is Predicated on Flawed Information.

The Service has based the proposed rule on information obtained from the United States Geological Survey (USGS) Open-File Report 2009-1202 entitled, *Giant Constrictors: Biological and management profiles and an establishment risk assessment for nine large species of pythons, anacondas, and the Boa constrictor* (Constrictor Report). The

Constrictor Report is a compilation of, “summaries of the biology of nine very large constrictor species” and considers, “what effects these species may have on ecology, economy, and domestic tranquility of the United States were such snakes to become established.” The Constrictor Report then identifies a ‘perfect storm’ of consequences and risks, all predicated on supposition, assumption and inference, and very few if any predicated on data.

The information in the Constrictor Report, to the extent that it supports findings based on unpublished modeling, supported by nothing other than assumptions and preferences of the authors and untrammelled by the rigor of the presence/absence of data or empirical testing; represents a significant departure from existing practices that are based on data and empirically established relationships. This in effect is environmental regulation based purely on staff policy preferences, speculation, and inference rather than rigorous data-based science.

Information available on the species, which form the subject of the Constrictor Report, varies by species and much is unknown. However the Report draws conclusions, makes predictions and assesses risk based on speculation and hypothesis rather than data, which is required by USGS policy. Further, the Report contains derogatory remarks, inaccurate information, and is obviously biased in an attempt to advocate a particular public policy and actions. This approach violates the USGS Fundamental Science Practices Foundation Policy, the requirements of the Information Quality Act as specifically detailed in the February 22, 2002 Office of Management and Budget Guidelines, the Department of the Interior Guidelines, and the USGS requirements addressing information quality. USARK speculates that the Constrictor Report likely violates the Services own policies, if it were to have been processed internally.

In conclusion of this point, the Constrictor Report contains highly speculative and inaccurate information that is biased, unclear, inaccurate, incomplete and as a result is misleading and clearly advocates for regulatory control of these species. USARK members and affected industries will suffer immediate direct and indirect economic harm, and longer -term harm due to the replacement of the use of rigorous scientific data and analysis with ad hoc internal agency science based on arbitrary assumptions, speculation, and hypothesis driven by what can only be described as policy advocacy.

The Fish and Wildlife Services’ Initial Regulatory Flexibility Analysis (IRFA) does not provide a sufficient analysis of the impact on small businesses for the purposes of the rulemaking.

The Service ignores and/or uses incomplete facts in the record. Instead of seeking out available information in a technically appropriate manner, the Service bases its industry/business information on groundless assumptions, extrapolations, and conjectures. In short, the Service’s regulatory flexibility analysis is not a complete, reliable, or convincing analysis of the impact of the proposed rule on small businesses involved in the trade of the nine snake species included in the proposed rule.