

USARK LEGISLATIVE ALERT

H.R. 996, The Invasive Fish and Wildlife Prevention Act of 2013 (“IFWP”)

Introduced: March 5, 2013 by Representative Louise Slaughter (D-NY). Currently H.R. 996 has 28 co-sponsors, all Democrats. A list of co-sponsors is included at the end.

Synopsis: Among other things, the IFWP: (1) Creates a new system for designating species as “injurious” and banning import, interstate commerce, and transportation of listed taxa (including family, genus, species, and subspecies); (2) Requires the U.S. Fish and Wildlife Service (“FWS”) to develop regulations and, over time, review all nonnative live wildlife for potential to injure human health, livestock, native wildlife, and the environment; (3) Gives FWS the duty and power to regulate pathogens and harmful parasites in nonnative and native wildlife, including power to quarantine imported animals or ban interstate movements of animals or species hosting or thought to host pathogens or harmful parasites; (4) Creates significant new reporting requirements and civil and criminal penalties; (5) Requires FWS to impose a fee on all live, imported wildlife to recover 75% of the costs incurred in carrying out its duties under the law.

Legislative

Prospects: H.R. 996 is essentially identical to H.R. 5864, a bill of the same name Rep. Slaughter introduced in the 112th Congress. H.R. 5864 and its Senate companion, S. 3606, died with the end of the last Congress with no action beyond referral to various committees. This year’s version of the bill is very likely to meet the same fate. There is little chance this legislation will pass the U.S. House of Representatives or even make it out of the House Natural Resources Committee. Even passage in the Democratically-control Senate is extremely unlikely.

Analysis: The IFWP represents a flawed approach to the problem of invasive species, putting long-established domestic businesses under threat when the problem relates to imports and unintentional introductions of particularly harmful wildlife. Its impacts extend beyond the pet trade. If passed, animal entertainment businesses, furriers, non-American Zoos and Aquariums accredited display facilities, and air, water, and truck transportation sectors will all suffer adverse effects. The IFWP attaches significant liability to even innocent activities.

By its terms, the IFWP does not preempt the Lacey Act, but it covers much the same ground and would, for all practical purposes, be the sole meaningful law governing the designation of injurious wildlife. The IFWP would create two new categories – “Injurious I” or “Injurious II” – representing greater or lesser threats to people, agriculture, wildlife, or the environment, as well as the ability to control these threats. A listing under either category results in a ban on all commerce. The Injurious II category, however, sets a lower bar for listing than currently exists, requiring only minimal showing of potential harm.

For this and other reasons, if passed, H.R. 996 would greatly increase the number of listed species, including most, if not all, nonnative snakes and reptiles. This is

because, in addition to a low listing threshold, the Act also: (1) includes weak science standards (decisions to be made on “sound science” rather than the “best available science”); (2) encourages use of “predictive models,” like easily manipulated climate matching models used to list Burmese pythons and others; (3) has a new petition process and import reporting system environmental and animal rights groups will use in public scare campaigns and employ to force FWS to ban key animals in trade; (4) allows for listing at the family rather than species level; (5) short-cuts administrative processes, including eliminating required economic and social impact analyses; and (6) requires FWS to undertake its own review of virtually all nonnative wildlife species.

The new user fee will fall heavily on the reptile and pet industries, causing significant economic harm. Because the fee must recover 75% of costs resulting from FWS’ greatly expanded responsibilities, the fee must generate large revenues. Coupled with the inevitable reduction in the number of taxa allowed to be imported, this means the fee will fall on an increasingly small number of importers. An industry death-spiral will result as fewer businesses bear increasing costs, prices increase, and profits drop, driving lawful businesses into bankruptcy.

Finally, though not exhaustive of H.R. 996’s flaws, FWS’ new duty to regulate pathogens and parasites will create significant new customs delays and competing regulatory mandates with other federal agencies, like the Food and Drug Administration, the Animal and Plant Health Inspection Service, and others.

Action: While the IFWP is not likely to become law in the 113th Congress, it is not unusual for legislation to be introduced in multiple congresses over time before finally passing. Activists have and will continue to push for a “white list” approach to injurious designations (*i.e.*, barring nonnative live wildlife until shown not harmful),¹ and there is significant and reasonable concern about invasive species. All this means that the issue is not going away, and efforts to impose greater restrictions on wildlife imports will continue.

It is important, therefore, that the reptile industry makes its voice heard. We need to ensure that domestic businesses are not harmed as Congress addresses legitimate concerns over imported invasive species. Therefore, USARK will contact key committee staff and Members of Congress to convey the industry’s concerns. We encourage you to contact the members of your congressional delegation and likewise ask them to oppose H.R. 996. It is especially important to contact your Representative if he or she is a co-sponsor of the bill. More information can be found at the USARK Action Alert page for H.R. 996.

¹ Despite reports to the contrary, H.R. 996, the IFWP, does not create a “white list” approach. Rather than barring imports, it requires that imported wildlife be analyzed. In the end, the effect may not be much different, but correct terminology is important.

- **H.R. 996's Co-Sponsors:**

Rep. Rangel, Charles B. [D-NY-13]
Rep. Levin, Sander M. [D-MI-9]
Rep. Higgins, Brian [D-NY-26]
Rep. Ellison, Keith [D-MN-5]
Rep. Hastings, Alcee L. [D-FL-20]
Rep. Blumenauer, Earl [D-OR-3]
Rep. Grijalva, Raul M. [D-AZ-3]
Rep. Bordallo, Madeleine Z. [D-GU-At Large]
Rep. Maffei, Daniel B. [D-NY-24]
Rep. Lee, Barbara [D-CA-13]
Rep. Conyers, John, Jr. [D-MI-13]
Rep. Capps, Lois [D-CA-24]
Rep. Moran, James P. [D-VA-8]
Rep. Kaptur, Marcy [D-OH-9]
Rep. Walz, Timothy J. [D-MN-1]
Rep. Murphy, Patrick [D-FL-18]
Rep. Sablan, Gregorio Kilili Camacho [D-MP-At Large]
Rep. Farr, Sam [D-CA-20]
Rep. Maloney, Carolyn B. [D-NY-12]
Rep. Peters, Gary C. [D-MI-14]
Rep. Ryan, Tim [D-OH-13]
Rep. Pingree, Chellie [D-ME-1]
Rep. Dingell, John D. [D-MI-12]
Rep. Owens, William L. [D-NY-21]
Rep. Nolan, Richard M. [D-MN-8]
Rep. Pocan, Mark [D-WI-2]
Rep. Kildee, Daniel T [D-MI-5]
Rep. Thompson, Mike [D-CA-5]