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March 16, 2015

Via Electronic Mail

Mr. Daniel M. Ashe
Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

RE: “Cooling-Off” Period for Listing of Reticulated Python and Three Anaconda Species, Docket No. FWS-R9-FHC-2008-0015

Dear Director Ashe:

We are writing to you regarding the U.S. Fish and Wildlife Service’s (“FWS” or “Service”) final rule entitled *Injurious Wildlife Species; Listing Three Anaconda Species and One Python Species as Injurious Reptiles*, published March 10, 2015, in the Federal Register. This rule adds the reticulated python (*Python reticulatus*), DeSchauensee’s anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*) to FWS’ list of injurious species under the Lacey Act, 18 U.S.C. § 42. For reasons explained below, we are writing to request an extension of this rule’s effective date.

As you are aware, the question of the effect of a designation of a species as injurious under the Lacey Act is currently being litigated. In its challenge, which soon will be amended to add the new listings, the United States Association of Reptile Keepers (“USARK”) is seeking, among other things, a determination as to whether FWS has authority to prohibit interstate commerce among continental states (not including the District of Columbia) of domestically-bred injurious species. This question, based on the Lacey Act’s language, legislative history, and other sources, remains unresolved.

In light of the ongoing litigation and for reasons detailed below, USARK respectfully requests you employ the discretion the Administrative Procedure Act grants you to delay the rule’s effective date. The status quo should be maintained until after this case has been heard and decided, plus a reasonable amount of time thereafter to allow for an orderly adjustment by the industry in the event the Service prevails. However, recognizing that the Service likely needs to set an effective date for a time-certain, we believe an initial 12 month extension may allow

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time for judicial resolution, particularly if your agency and the U.S. Department of Justice work with us to expedite the matter. Further extensions should be granted as necessary.

For several compelling policy and legal reasons, such extensions are in all parties' interests.

First, as the final rule notes, of these four species, only two – the reticulated python and green anaconda – are currently held domestically. Of these, only reticulated python comprise a significant portion of trade in large constricting snakes. Both animals are relatively expensive animals, costing from hundreds to tens of thousands of dollars for morphs displaying rare genotypes and phenotypes. Each requires special care and attention in breeding, handling, and ownership. As such, their owners tend to be serious and highly experienced herpetologists.

Second, reticulated pythons are widely-held in the U.S., found in all states where they are allowed. FWS cited similar ubiquity and states' ability to regulate snakes as a reason not to list the boa constrictor. Both Florida and Texas—the only two continental states the U.S. Geological Service's risk analysis found climates even potentially suitable for these animals—each have regulatory regimes to effectively control these species during the requested extension period.

Third, U.S. breeders have invested decades and millions of dollars in acquiring, maintaining, and selectively breeding the thousands of broodstock animals and tens of thousands of eggs currently held in inventory. The costs of caging, feeding, and caring for these animals are high. To recoup even some of these sunk and fixed costs, they will have to sell as much inventory as possible. Not all of these breeders, and only one major breeder, however, are located in a state with a designated port. Further, reticulated python and green anaconda are CITES Appendix II species requiring export permits which take more than 30 days to obtain. As you are aware, the final rule and its supporting economic analyses highlight the continued ability of breeders to export these animals as a factor that mitigates some of their listings' economic impacts. Breeders not located in a state with a designated port will not have this option.

Finally, even for sellers in states with a designated port, exports represent only a fraction of revenues. In-state sales are similarly small. Reticulated python and green anaconda breeders rely on a national market. FWS' interpretation of the Lacey Act as limiting injurious species sales to intra-state and export markets only will result in significantly fewer sales and lost revenues. Such losses include those from existing contracts that cannot be fulfilled because, for example, they are for incubating snakes or current cold weather precludes shipment. Reticulated python and green anaconda stocks that cannot be sold will have to be reduced by some means.

All these factors weigh in favor of granting the requested extension. Delaying the effective date during the pendency of the court case will maintain the status quo, preventing a hurried rush by breeders to liquidate current inventory and potentially unnecessary and irreparable financial and personal harm. With a deadline of only twenty-five days, the only way to recoup some losses will be to conduct a "fire sale" of reticulated pythons and green anacondas, inevitably leading to ownership by less responsible or experienced individuals. The

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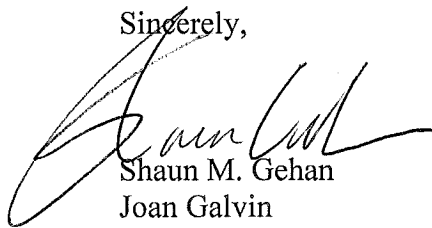
unnecessarily short window will also result in more of these snakes being euthanized; something that neither USARK nor FWS would like to see.

A further, post-decisional extension of the effective date, if necessary, would allow breeders time to fill pending interstate and export orders; time to find other responsible buyers; and, if necessary, conduct a humane and orderly inventory reduction. The current thirty days is simply not sufficient time to achieve these objectives. On the other hand, for reasons explained above, there are no countervailing risks that weigh against the requested delay.

The APA vests you with discretion to set an effective date well beyond thirty days. Further, the Regulatory Flexibility Act and Executive Order 12866, along with President Obama's Executive Order 13563 and its accompanying Presidential Memorandum, "Regulatory Flexibility, Small Business, and Job Creation," all direct federal agencies to consider alternatives that minimize economic impacts on regulated small entities. All the breeders impacted by this rule are small businesses. We respectfully urge you to avail yourself of the flexibility the law allows.

Obviously, this is a time-sensitive matter. We would be pleased to meet with you to discuss this request in further detail at your earliest convenience and look forward to timely response. Thank you very much for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaun M. Gehan". The signature is fluid and cursive, with a large initial "S" and "G".

Shaun M. Gehan

Joan Galvin

Counsel and Advisors to the

United States Association of Reptile Keepers