TESTIMONY BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS, AND WILDLIFE
THE NONNATIVE WILDLIFE INVASION PREVENTION ACT HR 669

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On behalf of the
Association of Fish and Wildlife Agencies

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Thank you, Madam Chair. I am Lawrence Riley, Wildlife Management Division Coordinator of the Arizona Game and Fish Department, and I am providing testimony on behalf of The Association of Fish and Wildlife Agencies (Association). I am here on behalf of Mr. Tom Remington, Director of the Colorado Division of Wildlife and the Chair of the Association's Invasive Species Committee. I appreciate the opportunity to share with you the Association's perspectives on HR 669, the Nonnative Wildlife Invasion Prevention Act. The Association was founded in 1902 as a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the 50 United States and U.S. Territories, Canadian Provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest. The cross jurisdictional nature and North American perspective of the Association is of particular relevance in that nonnative wildlife, introduced either intentionally or accidentally, respect no boundaries and are an issue of local, State, regional, national, and international concern.

The State fish and wildlife agencies have broad statutory authority and responsibility for the conservation of fish and wildlife resources within their borders, and their authorities extend to both native and nonnative species. Because of our responsibility for and interest in the conservation of fish and wildlife resources, state fish and wildlife agencies have vested concerns in the prevention and control of unwanted and unplanned introductions of nonnative species that can cause damage to our wildlife resources, ecosystems, the economies of our states and the nation, or pose risks to animal or human health. To that end, the Association maintains a standing committee on Invasive Species and has been active with the Aquatic Nuisance Species Task Force (ANSTF) virtually since its inception as an *ex officio* member, and is also represented on the Invasive Species Advisory Committee.

Madam Chair, on behalf of the Association, I would like to thank you for your leadership in bringing forward this important legislation. As a result of the Association's roles and involvement in planning for Invasive Species, we are supportive of the concepts underlying HR 669. It is consistent with our Invasive Species Committee's principles for federal legislation and is aligned with strategies of the Aquatic Nuisance Species Task Force and the Invasive Species Advisory Committee. We are supportive of the establishment of fairly applied fees to create a Nonnative Wildlife Invasion Prevention Fund to manage the costs of assessing risk. Still, the Association believes that the bill

could be improved and strengthened in a few specific areas; we would be glad to work with you and your staff to do so. We present here suggestions for your consideration.

Complementary Roles of Federal and State Authorities

Responsibility and authority for wildlife in the United States are not reserved to the federal government. Clearly, importation and interstate transportation and trade in wildlife are vested in the federal government, but care should be exercised as federal programs restrict State Sovereign authorities to regulate and manage wildlife within their boundaries. HR 669 exerts federal controls over importation to the United States, and extends those controls to possession, transportation, culture, and exchange of ownership within the boundaries of a state. With these roles in mind, we believe that the relationship between the federal government and the states is Sovereign-to-Sovereign. The roles of the States in communicating with the Department in the processes described in HR 669 should be consultative in nature, rather than simply being provided notice through the Federal Register.

Risk Analysis Considerations

The application of a Risk Assessment process for importation of nonnative wildlife into the United States, if conducted in a fair, equitable, and transparent manner, is a key element of managing the challenges that Invasive Species pose to wildlife, ecosystems, economies, and human and animal health. The Association recognizes that many nonnative species can be valued assets as a component of wildlife resources, as economic assets for agriculture or forestry, as subjects of educational displays and scientific research, and as pets. In a number of cases, State wildlife agencies manage introduced species as components of a State's wildlife resources. We believe that the mechanism described in Section 3 of HR 669 can establish a much-needed framework to determine risk in advance of importation, including process transparency and critical consultation with the State authority, and provides promise of making reasoned determinations that consider and balance potential risks and benefits from import.

Risk analysis adds a dimension to risk assessment that provides for fair and equitable evaluation of species proposed for importation to the United States. We believe that Section 3 (a) (10) is intended to incorporate consideration of factors that can mitigate or offset risks to allow for reasoned decision making in a screening process. This kind of risk analysis is necessary in good government, and may provide for flexibilities not yet envisioned in HR 669 – a concept of 'conditioned approval'.

Screening of new imports of nonnative species to the United States has been a linch pin of plans to reduce the impacts of invasive species to our nations ecosystems and economies. While screening is a linch pin to the future, it is also a daunting and challenging approach. Most current regulatory approaches are founded on specific prohibitions, and generally are not founded on a thourough catalog of animals in transport to or within the United States. Hence, there are no triggers that stimulate a Risk Analysis prior to importation, with the goal of fairly assessing the risks and benefits of adding to the catalog. Screening processes are absent from wildlife regularoty approaches for the United States, and HR 669 provides an avenue to create those processes. The Association supports establishment of federal processes that trigger Risk Analysis prior to importation of new species to the United States, and allow for reasoned decision making that takes into account potential risks, benefits, and mitigating controls.

Section 3(b)(1) of the Act requires the Secretary of the Interior to carefully consider "the identity of the organism to the species level, including to the extent possible more specific information on its subspecies and genetic identity." This is an important provision, as the subspecific and genetic characteristics of species can greatly contribute to the invasive (or non-invasive) nature of an organism. That said, it is also important to note that with the advance of science, new challenges in identifying organisms are arising and will arise in the future. To the extent possible, these advances should be considered in regulations that emerge from this Act. The Act does not identify or address treatment of hybrid wildlife, transgenic animals, or genetically modified organisms. While it may not be necessary to address them specifically in legislation, the manner in which such organisms would be addressed should be considered as part of the development of plans to implement resulting regulations.

Assessing and analyzing risk across the breadth of the United States is a daunting undertaking. The considerations in Section 3 (b) (4-9) will differ greatly from within the contiguous United States to island States and Territories and to Alaska; and thus such risk assessment may benefit from regional considerations. The variety and breadth of ecosystems within the United States presents a large spectrum of vulnerabilities. This highlights the importance of the partnership among the States and the Executive Branch in preventing nonnative wildlife invasions. I would submit that "states" constitute the regionality within our country upon which jurisdictional decisions can be founded.

The provisions of Section 10 of the Act, ensuring that States can maintain and establish prohibitions stricter than those established in federal regulation, are critical. Specifically, ensuring that a species otherwise "Approved" for importation into the United States under federal regulation can still be prohibited from importation into a particular State based upon that State's laws and regulations, is an essential companion to federal regulations resulting from this bill.

We support the idea in Section 3 (b) (10) of evaluating the likelihood of parasites and pathogens accompanying species proposed for importation as part of risk assessment. Realistically, most wild animals carry some parasites or pathogens. The threshholds of these components of risk assessment and analysis must be scientifcally-based; must reasonably evaluate the potential transmissibility of parasites or disease agents to humans, resident wildlife, livestock, and pets; and must fairly consider the reasonable mitigation of those risks through handling and shipping procedures.

HR 669 considers the complexity of issues involved in regulating the possession of wildlife, particularly in Section 6. However, while Section 3 (f), Animals Imported Prior to Prohibition of Importation, allows persons to possess animals that were "imported legally even if such species is later prohibited" from importation, however, the details of importation or acquisition may not always be traceable in the case of nonnative wildlife kept legally (per individual State and/or local statutes and regulations) as pets in the United States. Thus it may be important to include considerations for pet owners to declare their pet at or during a period before the time of listing as "Unapproved" and thus maintain posession of nonnative pets (if legal in their state of residence) even following prohibition, with the clear understanding that the provisions regarding eggs or progeny stated in Section 6 (a) (1) will apply to that animal. Because State Law Enforcement personnel are often involved in the regulation of wildlife kept as pets, such a provision could reduce the law enforcement burden for the States.

The Concept of an Approved List

The screening processes envisioned in HR 669 constitute a 'sea change' in approaches to importation of nonnative wildlife. Historically governed by 'Prohibited Lists', the proposed "Approved List" in Section 4 of the Act provides the triggering mechanism necessary to screen prior to importation. We support the adoption of this kind of approach. It is, however, not without difficulties.

Transition to a screened 'Approved List' will generate initial fears and uncertainties among the regulated public. The rolls of nonnative species already introduced to the United States; the nonnative species in international trade with the United States; the nonnative species in interstate trade within the United States; and the nonnative species currently in culture in the United States are long and poorly documented. The establishment of the Preliminary Approved List described in Section 4(b) of the Act will be complex and controversial.

Some nonnative species will not be eligible for consideration on the Approved List. The 'Approved List' concept, in conjunction with Section 5 requirements and limitations in permitting authority, preclude the possibility of not only importation but also possession and breeding of stock in the United States. While perhaps prudent in many instances, it perhaps unnecessarily constrains the possiblity of possession, breeding, and exchange of ownership with conditions. The Secretary's discretion in issuance of permits is significantly constrained in Section 7 of the Act, potentially limiting otherwise desirable activity with nonnative species. For example, the use of commercial harvest as a biological control tool for a target invasive species; or the use of sterile or genetically modified invasive species in a pest management strategy would appear to be an activity that could not be permitted.

We would like to discuss options for modification of HR 669 that might improve its efficiency, flexibility, and utility. We believe that Section 5 of the Act, addressing the development of a parallel 'Unapproved List', may be reduntant, unnecessary, and add to the cost and complexity of program implementation. We believe that greater flexibility should be afforded to the Secretary regarding permitting. As currently written, Section 7 of the Act limits permitting to importation only, and ignores possession, breeding, or exchange of ownership – all of which would be prohibited under statute; and limits those permits to scientific and medical research, zoological and aquarium displays, and educational purposes. We find that greater flexibility in permitting may be necessary.

Financing Nonnative Wildlife Invasion Prevention

Section 8 of HR 669 sets forth a system where proponents for an importation would be reasonably assessed the financial costs of risk assessment and public process for making determinations. State wildlife agencies have long relied upon user-pay, user-benefit approaches to wildlife conservation. It is a tried and true strategy. However, there are challenges that the Subcommittee should consider in adopting this strategy for this program.

The first challenge is program establishment during the first 37 months of its operation, during which fees are not collected. The legislation does not address appropriations to initiate program development and risk assessment. We believe that the program of work

described by the Act is substantial. Appropriations necessary to finance this work should accompany the assignment. Absent appropriations, if federal agencies are intended to reallocate resources to initiate this program, the Association would like to work with you and your staff to ensure that such a reallocation would add to, rather than replace, existing federal activities or missions critical to the States.

The second challenge is program sufficiency. At this point of development, it is unclear what federal cost would be for a user requesting evaluation of a species for listing. We assume that the cost would not be trivial. While these factors will certainly be weighed during the process of regulation development as a result of this bill, having an understanding of potential costs and reasonable charges to requestors would help us gauge the potential sufficiency of the program envisioned by this Act.

Less immediately apparent federal costs, but critically important ones, are inspection, permit administration, and enforcement. We believe that the Department of Interior's capacity is already stretched to inspect incoming deliveries of live wildlife, and the process improvements described by this bill will place further demands upon the Department to inspect and enforce. Workforce needs for inspection, permit administration, and enforcement should be considered as Congress develops a financing strategy for this effort and incorporated into authorizations for appropriations.

Prevention is often viewed as the most cost-effective method of addressing potentially invasive species, and this bill is an excellent step in the right direction. This bill should be viewed as one step in development of a comprehensive approach that will include provisions for, and funding toward, Early Detection and Rapid Response if "Unapproved" species are detected in the early stages of establishment in the wild. Further, a comprehensive approach would enlist the assistance of States through implementation of their existing Aquatic/Terrestrial Invasive Species management plans and partner with State Wildlife Law Enforcement to extend the effectiveness of federal enforcement.

Building Unified Lines of Defense

HR 669 provides a framework to make reasoned decisions about new species proposed for importation. The best way to implement this framework is to be unified across jurisdictions. The proposed legislation to utilize scientifically credible and defensible risk assessment and analysis to identify animals "Approved" for importation into the United States is a reasonable approach to regulating the risks posed by animals that can, once introduced, directly affect the ecosystems in the United States.

Assessing risk and regulating importation and possession of wildlife is a role that the States hold in common with the Federal Government. The Federal role is focused on our national boundaries and importation into the United States, while the States regulate the possession, sale or exchange of wildlife resources into and within their borders. The two systems must work in concert. Because our roles are allied and intertwined, close consultation and coordination among the States and between the State and Federal approaches is essential. Recognizing the role of the States in Section 3 of the bill is a key provision to ensure coordination and collaboration, while Section 10 appropriately recognizes the role of States in establishing laws and regulations and does not preempt the States' authority to be more restrictive.

HR 669 can facilitate collaborative law enforcement between federal and state jurisdictions in Section 6(c) by allowing state peace officers to take into possession any "Unapproved" animals. Modifications already made to the Act provide protection to non-federal officers enforcing this act or similar state statutes, and to those non-federal employees that may hold and care for those animals under a chain of evidence or custody until final disposition of the animals can be determined.

Finally, it is important to remember that the United States shares borders with neighbor nations, thus building our lines of defense in collaboration with our neighbors is a prudent strategy. The Association, whose membership includes the Canadian Provinces and federal government of both Canada and Mexico, is committed to working through our members to continue to align our approaches. This Act would provide a strong foundation for a North American strategy to reduce the occurrences of unwanted and unplanned invasions of nonnative wildlife.

Concluding Remarks

Madam Chair, the Association believes that HR 669 as introduced is an excellent start in providing a mechanism for risk assessment and analysis of nonnative wildlife species proposed for importation, and in turn reducing opportunities for such species to become problematic or invasive. Given the attention to this issue, and the management burden of nonnative wildlife invasions in the States, the bill as currently drafted could be strengthened to be more efficient and flexible in its treatment of preventing nonnative wildlife invasions. Again, the Association would very much like to work with your staff, the Subcommittee, and the Executive Branch as this bill is refined and moves toward implementation by federal wildlife authorities in the Department of the Interior.

Again, thank you for providing us with the opportunity to testify on this legislation.