



ASSOCIATION of  
FISH & WILDLIFE  
AGENCIES

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The voice of fish and wildlife agencies

Hall of the States  
444 North Capitol Street, NW  
Suite 725 • Washington, D.C. 20001  
Phone: 202-624-7890  
Fax: 202-624-7891  
E-mail: [info@fishwildlife.org](mailto:info@fishwildlife.org)  
[www.fishwildlife.org](http://www.fishwildlife.org)

11 May 2010

Public Comments Processing

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

Division of Policy and Directives Management

U.S. Fish and Wildlife Service

4401 North Fairfax Drive, Suite 222

Arlington, VA 22203

**RE: Proposed Rule, FR Docket No. FWS-R9-FHC-2008-0015**

To Whom It May Concern:

On behalf of the Association of Fish and Wildlife Agencies (Association), in coordination with our Amphibian and Reptile Subcommittee (ARS) and Invasive Species Committee (ISC), I am providing comments for the Proposed Rule (FR **Docket No. FWS-R9-FHC-2008-0015**) pertaining to the addition of Indian python (*Python molurus*, including Burmese python *Python molurus bivittatus*), reticulated python (*Broghammerus reticulatus* or *Python reticulatus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), boa constrictor (*Boa constrictor*), yellow anaconda (*Eunectes notaeus*), DeSchaunsee's anaconda (*Eunectes deschauenseei*), green anaconda (*Eunectes murinus*), and Beni anaconda (*Eunectes beniensis*) to the list of injurious wildlife under the Lacey Act (18 U.S.C. 42). The Association would like to thank the US Fish and Wildlife Service (FWS) for the opportunity to comment on this proposed rule.

As you may know, the Association's members include all 50 US states and territories, Canadian provinces and territories and some Mexican states. We have solicited comments from our network of state non-game biologists and herpetologists along with members of our ARS and ISC. Members of the ARS include people with training in herpetology and the chair and vice-chair together represent the Association on the Partners in Amphibian and Reptile Conservation (PARC) Joint National Steering Committee. Also, the chair and vice-chair of our ISC represent the Association on the Invasive Species Advisory Committee (ISAC) and the Aquatic Nuisance Species Task Force, respectively. Herein, we provide both general and specific comments and responses to the questions listed in the Proposed Rule.

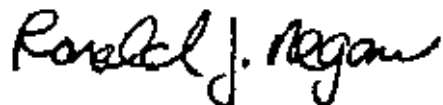
In brief summary, we believe that:

- Vulnerability to establishment of feral constrictor snake populations is not equal across the United States, with Gulf Coast states and island states and territories being most vulnerable; therefore a national rule may not be warranted. Rather, a more effective approach could be stronger federal financial support for risk analysis in combination with early detection and rapid response (EDRR) programs that could provide states with the resources to prevent such establishments. The development of federally-supported EDRR teams, in state-based and/or regional frameworks to handle species determined in risk analysis to be high risk, along with an associated rapid response fund, could do more to prevent future establishments than listing in the Lacey Act.

- As it is the states' responsibility to manage species that occur within their borders, including minimizing impacts to native species, states have the right to enact and enforce laws and regulations, including those more stringent than federal laws and regulations, as they see fit. Federal regulations that create undue burdens on state fish and wildlife agencies should be avoided.
- The Florida Fish and Wildlife Commission, where the problem of feral exotic constrictor snakes (and other non-native species) is greater than in most states, has thoughtfully and strategically developed very strong "Reptiles of Concern" regulations, in partnership with stakeholders, to both discourage non-serious snake owners from purchasing new reptile pets as well as to better regulate the industry within the state. Florida's regulations could serve as a model for development of industry-wide standards or enforceable best practices.
- Addition of all of these snakes to the Lacey Act list of injurious species may not achieve the Service's desired result of preventing "the accidental or intentional introduction of and the possible subsequent establishment of populations of these snakes in the wild in the United States" due to unintended consequences (undue burden on state and federal fish and wildlife agencies from potentially increased pet releases, increased surrendered animals beyond what agencies can handle, increased underground trade; see additional details in General and Specific Comments below), lack of USFWS enforcement capacity, and existing captive breeding populations throughout the United States.
- There are numerous potentially harmful species of all types of taxa currently in trade throughout the United States, and in the case of many of these snakes, they have been in trade for decades. That some of these snakes have become established particularly in Florida and the Commonwealth of Puerto Rico may suggest that either conditions are more specifically favorable there, or introductions are more likely there, or both. This is not to say that they could not become established elsewhere, but listing as injurious wildlife in the Lacey Act will not prevent establishment without active strategies, such as enforcement, and early detection/rapid response (EDRR) programs.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Regan". The signature is written in a cursive, flowing style.

Ronald J. Regan  
Executive Director

Cc: Priya Nanjappa

## **USFWS Proposed Rule, FR Docket No. FWS-R9-FHC-2008-0015**

### **General Comments:**

The Association is the voice of the state fish and wildlife agencies; as such, we must represent the collective interests of our states; in this particular matter, the most impacted state is Florida. Please see the appended testimony delivered by Scott Hardin of the Florida Fish and Wildlife Commission (FL FWC) on March 23, 2010, during a House Natural Resources Committee's joint hearing of the Subcommittee on Insular Affairs, Oceans and Wildlife and Subcommittee on National Parks.

The FL FWC's efforts to control existing feral reptile populations and prevent new such establishments are noteworthy; their Reptiles of Concern regulatory framework is certainly the most comprehensive among, and provides a strong model for, other state fish and wildlife agencies. Further, their efforts have included working closely with stakeholders such as the reptile pet industry, conservation organizations, and animal welfare groups to develop their regulations, which may enhance cooperation and support by their constituents.

Addition of these nine constrictor snakes to the Lacey Act list of injurious species may not prevent the Service's desired result of preventing establishment of additional constrictor snake populations in the wild. The Association is strongly in favor of federal financial support for early detection and rapid response (EDRR) programs in combination with risk analysis and screening procedures to help prevent the establishment of *any* other non-native and potentially detrimental species. Such EDRR teams could be established on a state-by-state and/or region-wide scale, and an associated rapid response fund would provide much-needed resources to allow states to address a new threat before it becomes unmanageable. Results of risk analysis could guide the focus for EDRR teams (e.g., teams could be assigned to monitor and respond in state- or regional teams to species determined to be high risk). Reed and Rodda<sup>1</sup> state that "future advances in technology may greatly expand the scope of snake eradication, but extant technology would not appear to be capable of eradicating any of the giant constrictors from south Florida unless the colonization were caught very early, perhaps around the present range of the Boa Constrictor population now in Miami (several hundred hectares or less). There is great uncertainty about this management prognosis because: (1) the availability of financial resources is unknown, (2) future improvements in eradication technology are uncertain, and (3) the known tools have not been adequately tested against any species of giant constrictor."

Further, the unintended consequences of a national-level prohibition in trade and interstate movement by addition of these snakes to the Lacey Act list of injurious wildlife are of great concern. Such consequences may include:

- Increased numbers of pet snakes released into the wild, potentially creating additional burden on state fish and wildlife agencies to address and mitigate such incidents.
- Pet snakes surrendered unexpectedly to state fish and wildlife agencies beyond what facilities and staff capacities can handle, creating undue burdens on our state agencies.
- Increased underground trade, creating undue burden on both state and federal fish and wildlife agencies to monitor and apprehend violators.

Given the above, enforcement of the Lacey Act with the addition of these snakes will require great financial expenditure to achieve, and addition to the list of injurious wildlife may not achieve the Service's desired result of preventing the release and establishment of these snakes. Because many of these species are commercially available through captive propagation facilities of various scales (commercial to small-scale private breeders) and in many states, the addition of these snakes as injurious wildlife may cause an increase in intrastate propagation and trade. Because many state fish and wildlife agencies do not have specific, existing regulations for non-native species (particularly for these non-native snakes), it does little to reduce the problem of potential establishment in the wild.

In addition, per our comments in 2008, while the Lacey Act prohibits importation or interstate transportation in the US and its territories without a permit for specific uses, there is no provision for permitting procedures with respect to the commercial pet trade. How will permit knowledge and adherence to such a requirement be implemented and enforced? Will all existing animals in private homes, pet stores, or in commercial or private breeding facilities be allowed to remain unpermitted (i.e., “grandfathered in”)? What will be done to prevent their release, or establishment of populations solely from intrastate trade? What will prevent an individual, legally keeping a snake or captive population of snakes, from releasing these if the individual has to move to a new state due to a change in employment or for family reasons? Should they be penalized for interstate movement of the animal in a captive “pet” situation, and how would this be handled? Further, Fowler and colleagues<sup>2</sup> state that “Because the Lacey Act does not authorize containment measures for listed species and possession remains legal after listing, it probably does little to prevent the accidental release of a species.” We would argue this extends to intentional releases as well, which could be explained as an “accidental escape” by the alleged violator, regardless of whether they were issued a permit.

As noted in our 2008 comments, perhaps the larger issue is a need for education/outreach targeted to the commercial pet trade regarding what to do when these long-lived species are no longer wanted, and/or incentives to surrender animals rather than release them. Many (though not all) owners of these species of constrictor snakes (and owners of other species of reptiles) no longer want them when they have reached a certain size or age; meanwhile “reptile rescue” programs have become saturated and are less frequently able to house and place these large species. While we believe that most responsible pet owners are not likely to release their pets, it is unknown how often owners might consider euthanization of an otherwise healthy but burdensome pet as acceptable over release when no other placement options are available.

<sup>1</sup>Reed, R.N., and Rodda, G.H. 2009. Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor. USGS-OFR-2009-1202. Reston, VA.

<sup>2</sup>Fowler, A.J, D.M. Lodge, and J.F. Hsia. 2007. Failure of the Lacey Act to protect US ecosystems against animal invasions. *Frontiers in Ecology and the Environment* 5(7): 353-359.

### **Specific Comments (in Response to Questions):**

***(1) What regulations does your State have pertaining to the use, transport, or production of any of the nine constrictor snakes?***

See Appendix A, “State Venomous&Dangerous Snake Statutes&Regulations.pdf”; Part 1 was compiled by AFWA in March and updated recently, Part 2 is Table 1 as copied from the PIJAC response to the 2008 Notice of Inquiry regarding the snakes of genera *Python*, *Boa*, and *Eunectes* (as found in the Docket file, document title “FWS-R9-FHC-2008-0015-1279.1.pdf”).

***What are relevant Federal, State, or local rules that may duplicate, overlap, or conflict with the proposed rule?***

The most relevant state regulation that would overlap with this proposed national-scale rule is that of the Florida Fish and Wildlife Commission. See appended materials below.

***(2) How many of the nine constrictor snakes species are currently in production for wholesale or retail sale, and in how many and which States?***

***(3) How many businesses sell one or more of the nine constrictor snake species?***

***(4) How many businesses breed one or more of the nine constrictor snake species?***

***(5) What are the annual sales for each of the nine constrictor snake species?***

Questions 2-5 above are best answered by industry representatives; please refer to the 2008 response from PIJAC for a summary of these numbers (as found in the Docket file, document title “FWS-R9-FHC-2008-0015-1279.1.pdf”).

**(6) How many, if any, of the nine constrictor snake species are permitted within each State?** Other than in the handful of states with specific restrictions or prohibitions, there are no exclusions, to our knowledge, against species, or numbers for that matter, of non-native snakes allowed for use (including live as pets).

**(7) What would it cost to eradicate individuals or populations of the nine constrictor snakes, or similar species, if found? What methods are effective?**

To our knowledge, there are few known populations of any of the nine constrictor snakes established in the wild other than those species documented to have been established or detected in Florida and the Commonwealth of Puerto Rico. Costs to eradicate will vary based on population size, survey, detection, and collection/removal techniques needed, and equipment (including boats or other vehicles) and staff to do so.

The most effective and least costly methods would focus on preventing establishment of any potentially invasive species and would include early detection and rapid response (EDRR). Eradication of established populations is very rarely effective and always costly. Reed and Rodda<sup>3</sup> state that “extant technology would not appear to be capable of eradicating any of the giant constrictors from south Florida unless the colonization were caught very early, perhaps around the present range of the Boa Constrictor population now in Miami (several hundred hectares or less).” This supports the need for EDRR programs to address and eliminate newly found and/or small feral populations. The Association’s Invasive Species Committee members have discussed models to provide capacity for coordinated EDRR efforts, and would be happy to work with USFWS to develop these.

<sup>3</sup>Reed, R.N., and Rodda, G.H. 2009. Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor. USGS-OFR-2009–1202. Reston, VA.

**(8) What are the costs of implementing propagation, recovery, and restoration programs for native species that are affected by the nine constrictor snake species, or similar species?**

To our knowledge, the Key Largo woodrat<sup>4</sup> is the only ESA-listed species to be directly affected by the feral Burmese pythons in the Everglades based on gut-content analyses of one captured snake; a recovery plan is in place for this endangered species. While other ESA-listed species may overlap with the range of the feral Burmese pythons, to our knowledge these and other constrictor snakes have not been demonstrated to contribute to the endangered species status or to have been the reason for an ESA candidate listing, though it is possible that established populations of these snakes could contribute to the decline of ESA-listed species. Thus, propagation, recovery, and restoration programs will vary widely for a given native species based on existing threats and potential reasons for listing, if such threats and reasons include any of these snakes. Establishment of early detection/rapid response (EDRR) programs could help to prevent additional species establishments, and thus could avoid the need for costly recovery programs for native declining or ESA-listed species potentially affected by these constrictor snakes.

<sup>4</sup>Greene, D. U., J. M. Potts, J. G. Duquesnel, and R. W. Snow. 2007. *Python molurus bivittatus* (Burmese Python). USA: Florida. Herpetological Review 38:355.

**(9) What State threatened or endangered species would be impacted by the introduction of any of the nine constrictor snake species?**

Gut content analyses of Burmese pythons showed the potential for these snakes to prey upon Florida state-listed Key Largo woodrats<sup>5</sup>, as well as American alligators, round-tail muskrats, and limpkins<sup>6</sup>. In

the latter study, out of 56 snakes examined, a single individual of each the latter three species was found. To our knowledge, it has not been demonstrated that pythons are contributing to the decline of these species, but new threats to already imperiled species are an area of concern. Establishment of early detection/rapid response (EDRR) programs could help to prevent additional species establishments, and thus could reduce the need for costly recovery programs for native declining or state-listed species potentially affected by these constrictor snakes.

<sup>5</sup>Greene, D. U., J. M. Potts, J. G. Duquesnel, and R. W. Snow. 2007. *Python molurus bivittatus* (Burmese Python). USA: Florida. Herpetological Review 38:355.

<sup>6</sup>Snow, R. W., M. L. Brien, M. S. Cherkiss, L. Wilkins, and F. Mazzotti. 2007c. Dietary habits of the Burmese python, *Python molurus bivittatus*, in Everglades National Park, Florida. Herpetological Bulletin 101:5-7.

**(10) What species have been impacted, and how, by any of the nine constrictor snake species?**

See response to (9) above.

**(11) What provisions in the proposed rule should the Service consider with regard to:**

**(a) The impact of the provision(s) (including any benefits and costs), if any, ...**

If the proposed rule is made final and all nine constrictor snake species are included in the Lacey Act list of injurious wildlife, the Service should consider the following unintended consequences (or costs):

- i) The release of either unwanted or perceived-to-be-illegally possessed pet constrictors. Following other injurious species listings, such as snakehead fish, additional locations of these animals were identified, and suspected to be from released captive animals. Enforcement of these and related activities will be difficult, and the burden may fall to state fish and wildlife agencies.
- ii) The surrender of animals, particularly outside of any organized amnesty day. Snakes may be unexpectedly surrendered to state fish and wildlife agencies or animal rescue facilities, and the Service should consider the undue burden on these facilities, including monetary burdens of keeping/feeding live animals until they can be placed, physical housing constraints, and public relations backlash if/when euthanasia is the most cost-effective option. These unintended costs to states and other small rescue facilities are an important consideration in a depressed economy.
- iii) Potentially increased underground trade. Trade in reptiles is growing<sup>6</sup>, and with the internet, monitoring and apprehending offenders is difficult and time-consuming, not to mention costly. In addition, it has been shown that wildlife that is considered "restricted" or otherwise rare in commercial markets, such as those on the injurious species list or CITES Appendices, can increase in commercial value, thereby fueling the underground markets<sup>7</sup>.
- iv) Replacement of these nine constrictor snakes in trade with other, potentially more dangerous (i.e., venomous, and/or potentially able to survive in the wild) with respect to demand. For some reptile pet owners/collectors, there is a trend to have the biggest, the meanest, or the rarest<sup>6</sup>. Some just want any snake. If a given species is no longer commercially available, it is quite possible that another species found legally in commerce will fill that opened niche, and it is also possible that such a species could be just as likely to become established in the wild.

**Benefits:**

The replacement of other reptiles (v) for these constrictor snakes could also be viewed as a benefit to large- and small-scale commercial businesses in minimizing lost revenue (iii), but again, it is quite possible that a replacement species could be just as problematic if it was released in the wild. This further emphasizes the need for both a risk assessment and management process, in conjunction with early detection/rapid response (EDRR) programs, to minimize such impacts.

<sup>7</sup>Christy, B. 2008. *The Lizard King: The True Crimes and Passions of the World's Greatest Reptile Smugglers*. Twelve Publishing, New York, NY. 241pp.

***...and (b) what alternatives, if any, the Service should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities?***

Whether or not some or all of these snakes are included in the Lacey Act list of injurious wildlife, a risk assessment and management process should be established, in conjunction with early detection/rapid response (EDRR) programs, and with associated funding. Funding could be supported, in part, by fees paid by end-users (i.e., those who purchase these and other potentially dangerous species commercially) which could be placed into an emergency response fund along with additional federal appropriations. There are several options to accommodate various scales of businesses, such as calculating fees on a sliding scale based on profit amounts from commercial sales. Further, national standards for the pet industry, including PIT-tagging of all large or venomous snakes in commerce, could be established to better regulate and monitor sales as well as to identify lost, stolen, or released animals. The Association is committed to working with USFWS through our Amphibian & Reptile Subcommittee and Invasive Species Committees to help identify alternatives. The Association has already been working through the Amphibian & Reptile Subcommittee to examine current state laws and regulations over the use of native herpetofauna and to develop recommendations for model approaches, supported by a USFWS-administered Competitive State Wildlife Grant ("Amphibian and Reptile Conservation Need"). We would be happy to address the same for the use of non-native species with similar support in the future. Regarding i), ii) and iv) above, there should be a USFWS contact designated in each state for constrictor snake-related questions and surrenders to reduce the burden on state fish and wildlife agency staff who are likely to spend staff time fielding questions or handling requests to respond. Only 1/3 of state fish and wildlife agencies have full-time herpetologists on staff; other states manage herpetofauna (and address public concerns) via their nongame or fisheries staff biologists, or law enforcement personnel. Thus, USFWS staffing specifically to address the unintended consequences from this rule, if finalized, is important.

***(12) How could the proposed rule be modified to reduce any costs or burdens for small entities consistent with the Service's requirements?***

Rather than finalizing the rule, the Service should establish (an) early detection/rapid response (EDRR) team(s), with funding, to address and immediately attempt to eradicate potential new populations in the wild. In addition, a) create industry standards for PIT-tagging, caging, and otherwise tracking sale and movement of these and other species in the pet trade, and b) work closely with industry partners to educate end users about proper handling and care, including costs of long-term feeding and maintenance, as well as appropriate disposition of unwanted animals.

***(13) Why we should or should not include hybrids of the nine constrictor species analyzed in this rule, and if the hybrids possess the same biological characteristics as the parent species.***

If the rule is finalized, hybrids should be included as well, as physical distinction of hybrids would be difficult for those enforcing this rule. However, USFWS enforcement capacity should be expanded for this and other rules associated with the Lacey Act; appropriations to USFWS should increase as expected duties increase.