

National Environmental Coalition on Invasive Species

Defenders of Wildlife, National Audubon Society,
National Wildlife Federation, Natural Resources Defense Council,
Union of Concerned Scientists, and the Florida Wildlife Federation*

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Public Comment Processing
U.S. Fish and Wildlife Service
Division of Policy and Directives Management
4401 N. Fairfax Dr., Suite 222
Arlington, VA 22203
Attn: R1N 1018-AV68
Filed at: www.regulations.gov, docket no.: FWS-R9-FHC-2008-0015

Re: notice of inquiry; constrictor snakes as injurious wildlife; R1N 1018-AV68

Dear Sir/Madam:

Thank you for the opportunity to comment on the above-referenced notice of inquiry, published in the Federal Register on Jan. 31, 2008, vol. 71, pp. 5784-85. The notice seeks information related to a possible listing of large constrictor snakes in the *Python*, *Boa* and *Eunectes* genera (hereinafter referred to collectively as “large constrictor snakes”), as injurious wildlife under the Lacey Act, 18 USC § 42. We, the undersigned members of the **National Environmental Coalition on Invasive Species (NECIS)** strongly support immediate listing of these large constrictor snakes as injurious and their prohibition from further import and interstate commerce in the United States. Our organizations together represent millions of Americans concerned about the severe ecological disruption and other harms caused by non-native invasive species, such as many commonly-sold species in these snake genera.

We reiterate the high level of concern several NECIS members have expressed in the past regarding the severe delays in the Fish and Wildlife Service (FWS) approach to listing injurious animal species. We believe Congress could not have intended that the FWS would take so long to finalize individual Lacey Act listing proposals. In the present case, the South Florida Water Management District (SFWMD) filed its listing petition that led to the current notice of inquiry on Sept. 21, 2006, yet it is now almost **two years later** and the FWS is merely making an “inquiry,” without yet issuing even a proposed listing rule. It appears the FWS is headed toward the typical time period of approximately **four years** from the date of the listing petition to complete an injurious species regulation. (See detailed analysis in, Fowler, A., D. Lodge, and J. Hsia. 2007. Failure of the Lacey

* The Florida Wildlife Federation is an affiliate of the National Wildlife Federation but is not itself a member of the National Environmental Coalition on Invasive Species.

Act to protect U.S. ecosystems against animal invasions. *Frontiers in Ecology and the Environment* 5:357-359.)

This reactive approach by the FWS of listing injurious species **many years after their risk becomes manifest** is unacceptable as it often is largely symbolic, with little “real world” regulatory significance. That is, the regulation typically can become law too late to make an appreciable difference in the invasion process, as Fowler et al. documented. The FWS approach needs to change immediately to more proactively protect the nation from invasive non-native animals, which pose a broad array of ecological, economic and human and animal health threats. (See generally, the Defenders of Wildlife 2007 report: *Broken Screens - The Regulation of Live Animal Imports in the United States*, online at: www.defenders.org/animalimports.)

Factual Background

We defer to comments from SFWMD and from other agency and private scientists who can provide up-to-date information on ongoing and potential impacts of these large constrictor snakes. We provide some undisputed background facts important to this comment related just to the Burmese python. Native to South Asia, this species can grow up to 20 feet long and 250 pounds in weight. Animal importers have shipped tens of thousands of them into the United States for the pet trade. Burmese pythons were first discovered deep in the Everglades National Park in the mid-1990s. It appears relatively clear they were clandestinely freed by uncaring pet owners or breeders who no longer wanted them. The U.S. Geological Survey (USGS) now estimates a breeding population of up to 30,000 Burmese pythons in south Florida and predicts they will continue to multiply, absent a massive and expensive control effort, for which agency personnel and resources are inadequate. According to the USGS increased temperatures from global warming could expand the Burmese python’s potentially suitable habitat to roughly the southern one-third of the nation.

Partly due to FWS’s slow approach to injurious species listings, Burmese pythons have continued to be allowed to be sold in south Florida (and across the rest of the nation), and additional clandestine releases of them could have occurred, facilitating further expansion of their occupied range. These continuing sales and foreseeable continuing releases frustrate effective management efforts by the dedicated, but under-resourced and overwhelmed, public agencies, such as the Everglades National Park and the SFWMD, whose missions compel them to try to control these large, dangerous non-native animals.

According to news reports, Florida authorities have recently also found pythons in Big Cypress National Park, Miami’s water management areas, Key Largo, and many state parks, municipalities, and public and private lands. They are not poisonous, but they are very powerful constrictors and could potentially kill children in an encounter. In their native habitats they have killed people. They are top predators that can and do eat Florida’s native wildlife of all kinds, including but not limited to, bobcats, deer, alligators, raccoons, rabbits, muskrats, possum, woodrats, mice, ducks, egrets, herons and

songbirds. In short, the Burmese python invasion is an ecological calamity in progress. Had the FWS adequately considered the risks of this species under its Lacey Act listing authority years ago, in a timely fashion, the FWS could have helped to prevent this invasion by having prohibited importation of, and commerce in, the species.

As far as other large constrictor species that have been sold in high numbers in the United States, detailed factual background is provided by Reed, who three years ago published an assessment of the risk to U.S. interests from the boa and python genera. (Reed, R. 2005. An Ecological Risk Assessment of Nonnative Boas and Pythons as Potentially Invasive Species in the United States. *Risk Analysis* 25:753–766; note: while the title does not list the genus *Eunectes* [anacondas], Reed’s analysis did consider that genus.)

Injurious Species Standard

The FWS notice of inquiry poses several questions to the public about sales figures, numbers of businesses potentially impacted by a listing decision and the likely financial costs of control and eradication if further invasions of *Python*, *Boa* and *Eunectes* occur. (Notice of inquiry, questions numbered 2 through 8, inclusive.) However, the issue properly before the FWS is not the economic impact of a possible Lacey Act listing, it is whether these snakes meet the definition of “injurious species” in 42 USC sec. 18(a), i.e., species that are:

“injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States”

It is abundantly clear these large constrictor snakes meet the definition. Reed’s 2005 study basically did the FWS’s work for it by thoroughly assessing the status and risks that a large number of the most commonly-sold species in those three genera pose. Reed described a high level of overall invasion risks, as well as pathogen and parasite risks. The current and potential injuriousness of these large constrictor snake genera “to human beings or to wildlife or the wildlife resources of the United States” is beyond reasonable doubt, given the highly foreseeable likelihood that these large snakes will continue to be released by irresponsible owners who no longer want them and will continue to be able to establish breeding populations throughout much of the southern portion of the nation.

Endangered Species Act Duty

We will not reiterate all of Reed’s risk assessment here because one of his findings stands out as determinative on the issue of an “injuriousness” determination by the FWS. That is his conclusion with respect to the threats these snakes pose to threatened and endangered species listed under the Endangered Species Act (ESA), which the FWS also administers. Reed found that: “a number of ESA-listed mammals in Florida could be

negatively impacted by the introduction of large-bodied boas and pythons (Table V).” His Table V is reproduced below:

Vertebrates Native to the United States and Listed as Threatened or Endangered Under the U.S. Endangered Species Act that are Most Likely to be Impacted by Establishment of Feral Populations of Boas or Pythons.

<u>Common Name</u>	<u>Latin Name</u>	<u>Geographic Location</u>
A. Listed Species Likely to Experience Predation by Introduced Boas and Pythons:		
Lower Keys marsh rabbit	<i>Sylvilagus palustris hefneri</i>	Florida Keys
Silver rice rat	<i>Oryzomys palustris natator</i>	Florida Keys
Florida salt marsh vole	<i>Microtus pennsylvanicus dukecampbelli</i>	Gulf Coast of Florida
Key Largo woodrat	<i>Neotoma floridana smalli</i>	Florida Keys
Key deer	<i>Odocoileus virginianus clavium</i>	Florida Keys
Florida scrub jay	<i>Aphelocoma coerulescens coerulescens</i>	Central Florida
Everglade snail kite	<i>Rosthrhamus sociabilis plumbeus</i>	South Florida
Light-footed clapper rail	<i>Rallus longirostris levipes</i>	Southern California
Cape Sable seaside sparrow	<i>Ammodramus maritimus mirabilis</i>	South Florida
Florida grasshopper sparrow	<i>Ammodramus savannarum floridanus</i>	South Florida

B. Listed Species Likely to Experience Competition or Exposure to Pathogens from Boas, Pythons, and Relatives:

Eastern indigo snake	<i>Drymarchon corais couperi</i>	Southeast USA
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Note: This list was compiled by comparing geographic ranges of ESA-listed species with areas most likely to be colonized by invasive snakes.

Reed’s 2005 prediction of foreseeable predation on listed species has been validated by the recent reports from southern Florida control officials who have discovered the listed Key Largo woodrat (*Neotoma floridana smalli*) in the stomachs of trapped Burmese pythons. (See, e.g., Austin, J. 2007. “Stopping a Burmese Python Invasion,” The Nature Conservancy – Florida Chapter website, online at: www.nature.org/wherewework/northamerica/states/florida/science/art24101.html , and “Fla. Politicians Take Steps to Rid Everglades of Invasive Pythons,” posted on NBC6.net news site, on Mar. 26, 2008, online at: www.nbc6.net/news/15715572/detail.html.)

In short, large constrictor snakes are taking highly endangered animals and will foreseeably continue to take more, potentially placing them in greater jeopardy of extinction. The latter-cited news piece, above, contains these quotes about a possible Lacey Act listing to reduce this risk:

- “[Florida’s U.S. Senator Bill] Nelson said he wants a ban on python imports and interstate sales, but Fish and Wildlife regulations take years to go through.”
- “It could be as long as seven (years), so you’ve got a problem completely out of control,” [National Park Biologist Skip] Snow said.”

The FWS's excruciating pace of taking multiple years to act to protect endangered species via a Lacey Act injurious species listing is utterly inadequate. It is inconsistent with section 7(a)(1) of the ESA, which provides the "Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter." 16 U.S.C. § 1536(a)(1). The purposes of the ESA are to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species." 16 U.S.C. § 1531(b). (See, Sierra Club v. Glickman, 156 F.3d 606, 616 (5th Cir. 1998), which concluded that Congress "intended to impose an affirmative duty on each federal agency to conserve each of the species listed [under the ESA].")

This "affirmative duty" to conserve each listed species, such as the Key Largo woodrat and others listed in Reed's table, above, which are threatened by snake predation, mandates that the FWS promptly take steps within its authority to reduce the likelihood of continuing predation. The FWS must "utilize such programs" that it administers, in this case its program of listing injurious species under the Lacey Act, to conserve listed species and their habitats in the face of this threat. It is reasonably foreseeable that reducing further imports and commercialization of the large constrictor snake genera at issue will reduce the numbers of their clandestine releases into the wild. This will eventually serve to reduce their overall numbers and occupied range and will correspondingly reduce the potential jeopardy they pose to listed native species.

This affirmative ESA conservation duty is not one that the FWS can "weigh" along with the economic impact information the agency is seeking in the bulk of the questions in its notice of inquiry. Nor is it a duty that the FWS can reasonably delay for multiple years from the time the potential jeopardy to listed species was first documented, especially in view of the detailed threat information available to the agency at least since the publication of Reed's analysis in 2005. An emergency-based immediate Lacey Act listing is called for now.

Conclusion

As top predators that will consume native threatened and endangered species, the *Boa*, *Python* and *Eunectes* genera are clearly "injurious ... to wildlife or the wildlife resources of the United States" under the Lacey Act definition, above. Further delays in their listing as injurious will add to the potential jeopardy they pose now to ESA-listed species. Their Lacey Act listing cannot be delayed consistent with Sec. 7(a)(1) of the ESA while the FWS seeks economic information related about snake sales numbers and about potentially-impacted businesses, on which the agency's notice of inquiry focuses. This ongoing delay amounts to a breach of the affirmative duty the FWS has to conserve threatened and endangered species.

The FWS needs to learn from its past mistake of failing to prohibit importation of Burmese pythons and to timely issue a final injurious species listing rule on an emergency basis for the three snake genera at issue. Then, the FWS needs to promptly

assess the many other incipient animal invaders that are in commerce now, for which a Lacey Act listing could help to prevent future ecosystem calamities comparable to the likely irreversible Burmese python invasion the nation now faces.

If you have any questions on this comment, please contact me at 202-772-0293 or email: pjenkins@defenders.org.

Sincerely,

/s/

Peter T. Jenkins
Director of International Conservation
Defenders of Wildlife
1130 17th St. NW
Washington, DC 20036

CC: Gary Frazer, Assistant Director, Fisheries and Habitat Conservation, FWS
Bryan Arroyo, Assistant Director, Endangered Species Program, FWS

On behalf of the undersigned:

Manley K. Fuller, III,
President
Florida Wildlife Federation
Tallahassee, FL
850-656-7113; wildfed@aol.com

Corry Westbrook
Legislative Director
National Wildlife Federation
Washington, DC
202-797-6840; westbrook@nwf.org

Michael Daulton
Director of Conservation Policy
National Audubon Society
Washington, DC
202-861-2242; mdaulton@audubon.org

Gabriela Chavarria, Ph.D.
Director, Science Center
Natural Resources Defense Council
Washington, DC
202-513-6268; gchavarria@nrdc.org

Phyllis N. Windle, Ph.D.
Senior Scientist and Director, Invasive Species
Union of Concerned Scientists
Washington, DC
202-331-5440; pwindle@ucsusa.org