

**TESTIMONY OF STEPHEN GUERTIN, DEPUTY DIRECTOR,
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE
THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL
RESOURCES, SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND
INSULAR AFFAIRS, REGARDING H.R. 358, STRATEGIC RESPONSE TO ASIAN
CARP INVASION ACT; H.R. 709, UPPER MISSISSIPPI CONSERVATION AND
RIVER PROTECTION ACT OF 2013; H.R. 1818, POLAR BEAR CONSERVATION
AND FAIRNESS ACT OF 2013; H.R. 2158, EXPEDITED DEPARTURE OF CERTAIN
SNAKE SPECIES ACT; AND H.R. 2463, TARGET PRACTICE AND MARKSMANSHIP
TRAINING SUPPORT ACT**

July 25, 2013

Good morning Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee. I am Stephen Guertin, Deputy Director for the U.S. Fish and Wildlife Service (Service), in the Department of the Interior (Department). Thank you for the opportunity to testify on five bills that address multiple conservation responsibilities of the Service: H.R. 358, the Strategic Response to Asian Carp Invasion Act; H.R. 709, the Upper Mississippi Conservation and River Protection Act of 2013; H.R. 1818, the Polar Bear Conservation and Fairness Act of 2013; H.R. 2158, the Expedited Departure of Certain Snake Species Act; and H.R. 2463, the Target Practice and Marksmanship Training Support Act.

H.R. 358, Strategic Response to Asian Carp Invasion Act

The purpose of H.R. 358 is to direct the Service, in coordination with the Army Corps of Engineers, the National Park Service, and the U.S. Geological Survey, to lead a multiagency effort to slow the spread of Asian Carp in the Upper Mississippi and Ohio River basins and tributaries. In the wild, self-sustaining populations of Asian carp cause immense damage to the country's aquatic habitats. When large populations of Asian carp become established, the cumulative effects of the species may include risk to human safety, reductions of native plants that provide spawning and nursery areas for native fish species, reduced food for native fishes and waterfowl, and negative economic impacts on communities that rely on fishing, boating, and waterfowl hunting. Containing and controlling established populations of Asian carp is a management challenge. Preventing the further spread of Asian carp into the country's waterways is a high priority for the Administration.

The Service currently helps implement two different strategies to address the threat of Asian carp in the United States. The first is *The Management and Control Plan for Bighead, Black, Grass, and Silver Carps in the United States* (Plan), which is national in scope. Coordination is done through the Service, in cooperation with a wide variety of federal, state, local and non-governmental partners. Its goal is eradication of all but "triploid" grass carp in the wild. The Plan was developed by the Asian Carp Working Group of the Aquatic Nuisance Species Task Force, which approved the final document in 2007. The Working Group included about 70 representatives from federal and state agencies and nongovernmental organizations in Canada and the United States. An Asian Carp Working Group Implementation Team has been convened to prioritize the 133 recommendations in the Plan for implementation, as funding becomes

available.

The second strategy is the more recent *Asian Carp Control Strategy Framework* (Framework) created in 2010, which focuses on Great Lakes waters only. This approach is being implemented through the Asian Carp Regional Coordinating Committee (ACRCC), a partnership of federal, Great Lakes states, and local agencies led by the Council on Environmental Quality. The goals of the Framework include reducing or extirpating existing Asian carp populations, minimizing impacts of those populations, containing the expansion of such populations, preventing future introductions, educating the public, and conducting necessary research.

There is growing concern about the spread of Asian carp species through the Mississippi and Ohio River Basins, the Great Lakes, and particularly in Minnesota in the upper Mississippi River and connecting waters. Approximately 20 live Asian carp have been caught in the upper Mississippi and St. Croix rivers since 1996, including a recent capture of a silver carp in February 2013. Because of this concern, in its FY 2014 Budget Request, the Service has committed to “supporting critical monitoring, prevention, and control actions both in the Great Lakes and in other areas, including control and containment to help keep Asian carp from spreading”, and we have requested \$5.9 million for this purpose. In Minnesota, the Service supports the state’s Aquatic Nuisance Species management plan and participates in a National Park Service and Minnesota Department of Natural Resources co-chaired Ad Hoc Asian Carp Task Force. The primary goal of this task force is to limit the impacts of Asian carp in Minnesota.

The Department supports the intent of H.R. 358 to direct the agency to lead a multiagency effort to slow the spread of Asian carp in the Upper Mississippi River and Ohio River basins. Funding to address this issue was included in the FY 2014 President’s Budget Request, but our ability to address it in the coming fiscal year will depend entirely on funds appropriated by Congress after any reductions caused by rescissions and sequestration. Implementation of a program such as that contemplated by H.R. 358 will likely be administratively burdensome given the competing demands on the Service’s budget.

To implement the legislation, the Service and its federal partners in these efforts would have to deploy or contract personnel to collect data, lead and coordinate with other agencies, analyze data, and develop annual reports to Congress. H.R. 358 does not contain an authorization for appropriations to fund these significant activities. The Service received approximately \$360,000 (after rescission and sequestration) in FY 2013 to support Asian carp activities outside the Great Lakes, and is working with partners in the upper Mississippi and Ohio River basins to provide technical assistance, coordination, and field surveillance. However, given the uncertainty of long-term funding to support these activities, the Service is concerned that without funding authorized to implement the legislation, we would have to divert resources from other priorities. The Administration therefore recommends amending H.R. 358 to include an authorization for appropriations section that is specific to the Service, National Park Service, Army Corps of Engineers, and USGS.

In addition, the Department recommends amending H.R. 358 to change the annual reporting

requirement to once every three years. We also recommend making implementation of the bill's provisions contingent upon the availability of funds specifically appropriated to carry out the Act.

H.R. 709, Upper Mississippi Conservation and River Protection Act of 2013

H.R. 709 would authorize the Secretary of the Army to take actions to manage the threat of Asian carp traveling up the Mississippi River in the State of Minnesota. The legislation also authorizes the Secretary of the Interior to petition the Secretary of the Army to close a lock and dam on navigable federal waters if certain criteria are met. The Administration does not support this provision in the legislation. The Service's share of legal obligation with regard to federal operation of locks and dams is limited to the impact these activities may have on species listed as federally threatened or endangered under the Endangered Species Act (ESA) or as protected under other federal statutes. Except for such species, or for species that otherwise fall under the legal responsibility of the Service through federal statute, the Service has no jurisdiction over fish in state waters. The Service has broad authority to coordinate or partner with federal agencies and the states to achieve fish and wildlife conservation goals, including the control of invasive species. Therefore, it would be more appropriate for the Service to confirm, upon consultation with the U.S. Army Corps of Engineers, that the criteria stipulated in the legislation have been met.

Section 6 requires the inclusion of additional areas in the Asian Carp Control Strategy Framework. The Service is concerned that implementing this provision would be difficult in light of competing budget priorities. However, the Administration does support implementing *The Management and Control Plan for Bighead, Black, Grass and Silver Carps in the United States* which would allow the Service to limit the spread of Asian carp in major watersheds such as the Great Lakes, the Missouri, Ohio, and Upper Mississippi Rivers.

H.R. 1818, Polar Bear Conservation and Fairness Act of 2013

H.R. 1818 would amend the Marine Mammal Protection Act (MMPA) of 1972 to allow importation of polar bear trophies taken in sport hunts in Canada from approved populations before the date the polar bear was determined to be a threatened species under the Endangered Species Act (ESA), provided that the hunter submitted a permit application prior to the date of the ESA listing.

The polar bear was listed as threatened under the ESA on May 15, 2008, primarily due to ongoing and predicted loss of sea-ice habitat caused by climate change. Until the polar bear was listed under the ESA, section 104(c)(5) of the MMPA had provided for the import of certain polar bear trophies from approved populations in Canada. However, any marine mammal listed as threatened or endangered under the ESA is considered "depleted" under section 3(1)(C) of the MMPA, and consequently, sections 101(a)(3)(B) and 102(b)(3) of the MMPA prevent the import of sport-hunted polar bear trophies. The United States Court of Appeals for the District of Columbia Circuit recently upheld this interpretation. The Service has interpreted the existing grandfather clause (section 104(c)(5)(D) of the MMPA), as continuing to authorize the issuance and use of permits that allow the import of polar bears legally harvested in Canada prior to

February 18, 1997. As of May 15, 2008, when the ESA listing took effect, except for those trophies that qualify under this grandfather clause, any permit previously issued under section 104(c)(5) could no longer be used to import a sport-hunted polar bear trophy, and no new permits could be issued or additional imports allowed under that section.

Once the proposed rule to list the polar bear as threatened was published in January 2007, the Service conducted extensive outreach efforts on the potential impact of an ESA listing on the import of sport-hunted trophies. Hunters were advised that, although the Service was able to authorize the importation of polar bear trophies taken in Canada under the provisions of section 104(c)(5) of the MMPA while the species was proposed for listing, the Service would not be able to continue to authorize imports under this section of the MMPA if and when the listing became final. The Service wanted hunters to be fully aware of the fact that if the polar bear were listed, then hunters would no longer be able to import their sport-hunted trophies. The Service attempted to inform all potential applicants that a decision on the listing was imminent and that, if the species was listed, further imports would be prohibited.

Specifically, on the day the polar bear was listed under the ESA, the Service had 44 permit applications pending for which a final decision had not been made on whether or not to issue a permit. Notice of many of these applications had already been published in the *Federal Register*, but the required 30-day comment period was still open or just recently closed. Other applications had only recently been received and the notice had not yet been published in the *Federal Register*. In addition to these individuals, it is possible that other U.S. hunters had taken bears from an approved population prior to the listing date, but had not yet applied to the Service for the required import permits. Because of this possibility, the Service cannot state how many additional bears were taken by U.S. hunters prior to the effective date of the ESA listing.

Of the 44 applications the Service received prior to the listing, two of the hunters cancelled their sport hunts and did not harvest a polar bear, and one application qualified for import under the current grandfather clause. Of the remaining 41 applications, 38 applications were received prior to the listing of the polar bear under the ESA and were for bears already taken from populations that had previously been approved for importation. The three remaining applications were received prior to the listing going into effect, but were not complete. These applications did not clearly indicate whether the sport hunt was successful, and if successful, if the bears were taken before or after the effective listing date for the polar bear. Thus, there are 41 hunters who could potentially import trophies if H.R. 1818 is enacted. This would be a one-time fix to address hunters who legally sport-hunted a polar bear before they were listed under the ESA.

The Service appreciates Congressman Young and the Subcommittee's coordination with us regarding this bill and the changes that have been made to address the Service's concerns about previous legislation. The Service also recognizes that there were a number of hunters who both applied for permits and successfully completed their polar bear hunts prior to the May 15, 2008 listing. We also recognize that, by court order, the Service's final decision to list the polar bear under the ESA went into effect immediately, whereas such decisions normally take effect 30 days after the publication date of the final listing decision. The ESA listing triggered an immediate change in the status of the polar bear under the MMPA such that polar bear trophies

could no longer be imported into the United States. If the ESA listing had taken effect 30 days after the publication date, as is normally the case, some of these hunters would likely have had the opportunity to import their trophies before the listing took effect.

The Administration therefore supports H.R. 1818 as it would allow those hunters who both applied for a permit and completed their legal hunt of a polar bear from an approved population prior to the ESA listing to import their polar bear trophies, provided that the hunter is required to submit proof that the bear was legally harvested in Canada from an approved population prior to the effective date of the ESA listing. The Department does not support any broader changes to the MMPA that would allow additional sport-hunted polar bear trophies to be imported beyond those where hunters submitted their import permit application and completed their hunt prior to the ESA listing.

H.R. 2158, Expedited Departure of Certain Snake Species Act

H.R. 2158 would amend the Lacey Act so that a “qualified stop,” as defined in the legislation, of certain snakes would be exempted from the existing prohibition against interstate transport. In January of 2012, the Service promulgated a regulation to list the Burmese (and Indian) python, Northern and Southern African pythons, and yellow anaconda as injurious wildlife under title 18 of the Lacey Act because we determined them to be injurious to wildlife and wildlife resources of the United States. These are the four species specified in H.R. 2158 that would be exempted from interstate transport prohibitions by “qualified [air cargo] stops” to designated airports where the snakes are being exported out of the country. The Department opposes H.R. 2158 because the legislation is not consistent with the intent of the injurious wildlife listing under the Lacey Act or with our agency’s efforts to protect U.S. ecosystems from the harmful effects of injurious wildlife.

All four species of listed constrictors are among the largest snakes in the world. Burmese pythons can grow to 23 feet and weigh 200 pounds. All four species grow larger than the largest native snake in the United States, and larger than many native predators. Our native species did not evolve with, and therefore, do not know instinctively how to avoid these new predators. These snake species grow rapidly, have high reproductive rates, are highly successful predators that will prey on almost any type of animal, and can live for 20 to 30 years. They are also excellent escape artists because of the tremendous strength of their constricting musculature and streamlined body shape. The ability of these snakes to escape enclosures by slipping through small openings, forcing even sturdy lids open, then going unseen, and escaping quickly makes constrictor snakes especially inappropriate for the action of “expedited removal,” because the exemption would add another opportunity for escape or release into the environment.

There are currently no effective control methods for pythons or anacondas, nor are any anticipated in the near future, but exotic python species have become established as reproducing populations in the wild. Through the Service’s application of the criteria under which species are designated as injurious wildlife, these four species were determined by the Service to be injurious to humans, agricultural interests, and to wildlife and wildlife resources of the United States, because they are: (1) likely to spread from their current established range to new natural areas in the United States; (2) likely to become established in disjunct areas of the United States

with suitable climate and habitat if released there; (3) likely to prey on and compete with native species (including threatened and endangered species); (4) likely to be disease vectors for livestock or native wildlife; (5) likely to damage ecosystems that would be difficult or impossible to recover; and (6) difficult or impossible to eradicate or control once established.

The Service believes the proposed exemptions in H.R. 2158 are not consistent with the intent of titles 16 and 18 of the Lacey Act, which are crafted to protect U.S. ecosystems from the harmful effects of injurious wildlife. This exemption is likely to encourage the continued breeding and trade of these species within the United States. An increase in the number of snakes being bred in the United States would increase the risk of further introduction and spread domestically. This unintended consequence would be inconsistent with the goals of the agency's injurious wildlife listing action.

H.R. 2463, Target Practice and Marksmanship Training Support Act

The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669-669i) authorizes the Secretary of the Interior to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects. The Act also provides for grants for a variety of uses including reintroduction of declining wildlife species, wildlife population surveys, species research, hunter education, acquisition of wildlife habitat, and public target ranges. Currently, Pittman-Robertson funds can only be used to pay 75 percent of the cost of building or operating a public target range. H.R. 2463, the Target Practice and Marksmanship Support Act, would amend the Pittman-Robertson Wildlife Restoration Act to change the funding requirements to allow up to 90 percent of target range construction and maintenance to be paid for with Pittman-Robertson funds, thus reducing the match burden on state and local governments.

In addition, H.R. 2463 would amend an existing requirement that Pittman-Robertson funding used for acquiring or constructing public target ranges be obligated within two years by allowing the funds to accrue over five years. This extension would allow individual projects to be funded over multiple budget cycles and significantly enhance the ability of states to acquire and build target shooting ranges.

Shooting, whether with gun or bow, is an American tradition. Creating opportunities for young Americans to experience this tradition, and pursue the goal of "marksmanship", also provides opportunity for them to learn about responsibility, about dedication, about accomplishment. The Department supports this legislation, because it will help create such opportunities. We would like to work with the Subcommittee to consider some technical corrections.

Conclusion

Thank you for the opportunity to present testimony today on this legislation. I am happy to answer any questions the Subcommittee may have and I look forward to working with the Subcommittee members as you consider these bills.