TESTIMONY OF GARY FRAZER, ASSISTANT DIRECTOR FOR FISHERIES AND HABITAT CONSERVATION, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITEE ON INSULAR AFFAIRS, OCEANS, AND WILDLIFE REGARDING H.R. 669, THE NONNATIVE WILDLIFE INVASION PREVENTION ACT

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Introduction

Chairwoman Bordallo and Members of the Subcommittee, I am Gary Frazer, Assistant Director for Fisheries and Habitat Conservation of the U.S. Fish and Wildlife Service (Service). I also serve as co-chair of the Aquatic Nuisance Species Task Force (ANS Task Force). Thank you for this opportunity to testify on H.R. 669, the "Nonnative Wildlife Invasion Prevention Act," legislation that would provide for a new approach for preventing the introduction of injurious nonnative wildlife species into the United States.

The Service appreciates the Subcommittee's leadership and support in the fight against invasive plants and animals. Today, my testimony will focus on the threats posed by invasive species, what the Service is doing to address that challenge, and our comments on H.R. 669. While the Service generally supports the intent of H.R. 669, we have some concerns with the bill as currently written. The Service would require new staffing and funding to deliver this new program, and we are still assessing the workload implications. However, as noted below, the Service recognizes the importance, and supports the general intent, of developing a cost-effective and timely screening mechanism for nonnative invasive species, and we look forward to working with the Subcommittee to address these issues.

Risks and Threats of Invasive Species

The introduction and establishment of invasive species have significantly impacted the health of our native species and ecosystems. We have only to look at a history of introductions, from the sea lamprey to the zebra mussel to tamarisk, to understand the broad scope of the problem. The United States continues to see a number of nonnative, potentially invasive species crossing our borders through various pathways. With the global nature of our economy and transportation systems, we expect this trend to continue. Invasive species are among the primary factors that have led to the decline of native fish and wildlife populations in the United States and are one of the most significant natural resource management challenges facing the Service.

It is difficult to estimate the full extent of the environmental damage from nonnative invasive species. However, we know that over 400 of the over 1,300 species that the Service protects under the Endangered Species Act are considered to be at risk primarily

due to competition with, or predation by, invasive species. Invasive species can also change the functions of ecosystems.

The brown tree snake is a major threat to the biodiversity of the Pacific region. A native of Indonesia, New Guinea, the Solomon Islands, and Australia, the brown tree snake arrived on Guam sometime during the 1940s-1950s as stowaways. The snakes have since spread across the entire island and have caused or been a major factor in the extirpation of most of Guam's native terrestrial vertebrates, including fruit bats, lizards, and nine of thirteen native forest bird species. Insect species that are no longer naturally controlled by native birds and lizards reduce fruit and vegetable production and their uncontrolled numbers require greater reliance on pesticides. Brown tree snakes also cause millions of dollars in damage to Guam's infrastructure and economy by climbing power poles and causing power outages.

The Service is concerned about the impact of aquatic invasive species to America's sport and commercial fisheries. In the Great Lakes region, the sea lamprey was accidentally introduced in the early 20th century as a result of the construction of shipping canals. This parasitic fish has been extremely destructive to economically important sport fish, including lake trout, salmon, rainbow trout, and walleye. During its life cycle, a single sea lamprey can kill 40 or more pounds of fish, and under certain conditions, only one in seven fish attacked by a sea lamprey will survive. Before sea lampreys invaded the Great Lakes, about 15 million pounds of lake trout were harvested in Lakes Huron and Superior annually. However, by the early 1960s, sea lampreys and other factors reduced the catch to 300,000 pounds.

Zebra and quagga mussels are invasive mollusks that impact both the natural environment and human infrastructure. The mussels impact native species through competition and biofouling, the undesirable accumulation of microorganisms in very high numbers. The mussels impact civic operations and development by clogging pipes in municipal and industrial raw-water systems and blocking water intakes for hydroelectric development and other industry. Both mussel species are easily spread unintentionally by recreational boaters and annually cause an estimated $30 million in damage to water delivery systems in the Great Lakes. In early 2007, quagga mussels were discovered in the Lake Mead National Recreation Area. They have since been found in Arizona, California, Nevada, and all 242 miles of the Colorado River Aqueduct. In January 2008, the first populations of zebra mussels were found in the San Justo Reservoir in California and Lake Pueblo in Colorado.

Invasive species are also one of the most significant threats to the National Wildlife Refuge System (NWRS), where they can destroy habitat, displace wildlife, and significantly alter ecosystems on refuges. Presently, about 2.4 million acres of National Wildlife Refuge (Refuge) lands are infested with invasive plants. There are at least 4,043 invasive animal populations recorded on Refuge lands. Although the NWRS is committed to controlling and eradicating these invasive animals and plants, our ability to do so is limited. For example, the Service has only been able to treat an average of 13 percent of the acres infested with invasive plants on an annual basis between fiscal years 2004 and 2008.

Meeting the Challenge of Invasive Species

As the old proverb goes, "an ounce of prevention is worth a pound of cure." The proverb resonates particularly well when addressing invasive species. Preventing new introductions is a primary focus of the Service and is the most effective strategy to protect our Nation's wildlife and habitats. The Service has a broad array of programs that complement the efforts of the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture and support our ability to prevent introductions and manage invasive species problems.

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), reauthorized by the National Invasive Species Act of 1996, established the Service's Aquatic Invasive Species (AIS) Program as well as the ANS Task Force, which is an interagency Federal Advisory Committee Act (FACA) group with 10 federal and 12 *Ex-officio* members co-chaired by the Service and the National Oceanic and Atmospheric Administration (NOAA). The ANS Task Force encourages Federal and State agencies to establish partnerships that will augment work with partners to enhance our collective efforts to address aquatic nuisance species issues. The ANS Task Force relies on the expertise of its six Regional Panels to identify regional ANS priorities; coordinate ANS program activities in each region; make recommendations to the ANS Task Force; and provide advice to public and private interests concerning appropriate methods of ANS prevention and control.

The Service's AIS Program was established to help coordinate prevention, control, and management action on invasive species that span geographic and jurisdictional boundaries. The program supports an AIS Coordinator in each of the Service's eight regions who works closely with Service field stations, State invasive species coordinators, nongovernmental groups, private landowners, and many others in their day-to-day activities. This dedicated network organizes cooperative surveillance efforts with other Federal, State, and local agencies, universities, and public interest groups to track the distribution of aquatic invasive species. It also conducts a variety of outreach activities to inform the public about the definition, biology, and impacts of aquatic invasive species and what they can do to help prevent their spread. These Regional Coordinators are in tune with both the national priorities of the ANS Task Force and the various emerging regional priorities. Their unique position allows them to play a critical role in bridging the gap between national and regional aquatic invasive species issues and translating the national priorities of the ANS Task Force into on-the-ground projects.

The Service's AIS program also administers the Service's only regulatory tool regarding invasive species, the Injurious Wildlife provisions of the Lacey Act (18 U.S.C. § 42(a)). Under Title 18 of the Lacey Act, the Secretary of the Interior is authorized to prohibit the importation and interstate transportation of species designated as injurious. Species listed as injurious may not be imported or transported across State boundaries by any means without a permit issued by the Service. Permits may be granted for zoological, educational, medical, or scientific purposes. Regulation of intrastate transport or

possession is the responsibility of each State, except for those species covered under a Service permit issued by our Division of Management Authority.

The Service's Office of Law Enforcement's (OLE) wildlife inspection program forms an important part of the nation's frontline defense at ports of entry by interdicting injurious wildlife species. Wildlife inspectors are stationed at 38 major U.S. airports, ocean ports, and border crossings, where they monitor imports and exports to ensure compliance with U.S. laws and regulations. Wildlife inspectors focus on detecting and deterring illegal trade in protected species and preventing the introduction of injurious wildlife. As part of OLE's efforts to prevent such introductions of injurious wildlife, Service special agents investigate illegal interstate commerce of injurious species (including Internet sales) and assist State counterparts with the enforcement of both Federal injurious species prohibitions and State laws that ban the introduction, possession, and sale of State-listed injurious wildlife.

The Service is also using partnerships to minimize new introductions and prevent the spread of invasive species. For example, the governments of the United States and Canada, working jointly through the Great Lakes Fishery Commission, have implemented a successful sea lamprey control program on the Great Lakes since 1956. The Service's Fisheries Program has two Sea Lamprey Management Offices located in Marquette and Ludington, Michigan. Jointly funded by the Service and the Great Lakes Fishery Commission, these offices employ approximately 110 staff to implement an integrated sea lamprey control program within United States portion of the Great Lakes. Sea lamprey abundance has been reduced by 90 percent as a result of the integrated control program. Congress appropriates more than $10.0 million annually through the State Department for sea lamprey management and research.

For the past 10 years, the Service's Fisheries Program has worked extensively to prevent the introduction and spread of Asian carp. We have supported a feasibility study on barrier options to prevent the introduction of these large fish into the Great Lakes; led the Asian Carp Working Group of the ANS Task Force which completed the National Management Plan for Asian carps; assisted in creating a Rapid Response Plan for Asian carp in New York canals; funded research on the use of pheromones as a deterrent to carp spread and research on native fish alternatives to the use of black carp in aquaculture; and conducted monitoring for early detection and rapid response. Black, silver and largescale silver carp were listed as injurious wildlife under the Injurious Wildlife provisions of the Lacey Act in 2007. Additionally, the evaluative injurious wildlife process for bighead carp is currently underway.

The Service's Partners for Fish and Wildlife Program provides technical and financial assistance to private landowners and Tribes to restore and protect habitat, including invasive species management and the reintroduction of native plants. From 2003-2008, the Partners for Fish and Wildlife Program was a cooperator in 3,718 habitat improvement projects that involved control of invasive species on approximately 1,300,000 acres. The Service's Coastal Program assists communities in conserving coastal resources and forms partnerships to conduct on-the-ground restoration, including

invasive species control activities in coastal areas. Between 2003 and 2008, the Coastal Program cooperated in 570 habitat restoration and enhancement projects that involved control of invasive species on approximately 256,287 acres of coastal habitat.

The NWRS invasive species program focuses on early detection and rapid response by engaging Friends groups and volunteers in the fight against invasive species. Over a period of three years, 2,750 volunteers contributed more than 49,000 hours to the treatment, inventory, and restoration of over 211,000 acres of refuge land through its invasives and volunteers competitive grants program. Additionally, five Invasive Species Strike Teams are working to control and manage invasive species in key geographic locations, including the Everglades, the Lower Colorado River and New Mexico, the Columbia-Yellowstone-Missouri River basins, North Dakota, and the Hawaiian and Pacific Islands.

Education and outreach efforts continue to be critical elements to the success of invasive species prevention and control. The Service and the ANS Task Force have been working for many years on educational outreach programs aimed at preventing additional introductions and controlling the spread of invasive species. The *Stop Aquatic Hitchhikers!* Public Awareness Campaign targets aquatic recreation users and promotes voluntary guidelines to ensure that aquatic nuisance species are not unintentionally spread through recreational activities. To promote prevention of introductions through other high-risk pathways, the Service, the Pet Industry Joint Advisory Council (PIJAC), and NOAA Sea Grant created the *Habitattitude*™ Initiative. This campaign encourages aquarium hobbyists and water gardeners to be responsible caretakers of their plants and pets as well as to be good environmental stewards.

Need for a New Approach

The Service primarily focuses on preventing the introduction or spread of invasive species because it is far more cost effective and because we have limited tools for long-term management and control of invasive species, particularly aquatic invasive species, once they become established. Long-term control is costly, and established populations may spread to new areas, thus increasing the costs. Even though there is progress in the development of management and control tools, we need to continue to work with our partners to improve current tools while developing new ones.

The Service recognizes the potential value of a new approach for managing the risk of importing potentially invasive nonnative wildlife. Having the opportunity to evaluate nonnative species that are proposed for importation could be an invaluable tool to ensure that we are more proactive in preventing the introduction of harmful invasive species. As such, the Service supports the intent of H.R. 669 to prevent the introduction and establishment of harmful invasive nonnative wildlife species through the development of a risk assessment process with scientifically credible procedures that will be transparent and efficient, so that wildlife importers can obtain timely decisions and make investment decisions accordingly. The Service does, however, have some concerns with the bill, and I would like to highlight three concerns here in my statement. We look forward to

working with the Subcommittee to address these issues and others as we continue our review of H.R. 669.

A Timely Risk Assessment Process

The injurious wildlife evaluations we currently make under the Injurious Wildlife provisions of the Lacey Act require a significant amount of time and cost to process. The time period to complete an evaluation depends upon the availability of biological and economic data and the complexity of the analyses required under the Lacey Act, National Environmental Policy Act (NEPA), Small Business Regulatory Enforcement Fairness Act (SBREFA), and other applicable regulatory process requirements. For many of the species evaluations, biological information must be gathered from overseas, and often translated into English, before an evaluation can be initiated. The Service has not been able to make injurious wildlife designation under the Lacey Act into the nimble, timely, and proactive tool needed to address importation and transport of potentially harmful non-native species.

Preventing the introduction and establishment of invasive species is a priority of the member agencies of the ANS Task Force and National Invasive Species Council (NISC). The strategic plans for these groups highlight the need to develop and use science-based risk assessments or screening tools to proactively address the threats posed by nonnative wildlife. A joint ANS Task Force-NISC Prevention Committee has worked cooperatively across Federal agencies, and with nongovernmental input, to advise and support the ANS Task Force and the NISC in fulfilling its responsibilities under the NANPCA, as amended, and Executive Order 13112, as it relates to minimizing the risks associated with future establishment and spread of invasive species. The Prevention Committee's Nonnative Wildlife Screening Working Group and the Risk Assessment Working Group are both developing science-based risk assessment and screening methods for review by member agencies.

We recognize that the proposed risk assessment process under H.R. 669, along with the establishment of lists of approved and unapproved species, is intended to provide a more proactive and efficient process for screening non-native wildlife proposed for importation than currently occurs under the Injurious Wildlife provisions of the Lacey Act. We want to assure you that we share your objective that the Service is able to determine what species are approved for import based on sound science and supported by risk assessments. However, for this approval process to be credible, and thus in accordance with the United States' international trade obligations, the Service must have adequate processes in place to handle this potentially very heavy burden. In addition, we are still evaluating how the various processes in the bill will be impacted by existing administrative process requirements, particularly under Executive Order 12866, the Regulatory Flexibility Act and SBREFA.

Enforcement and Lacey Act Overlap

The Service is further concerned about the enforceability of the Act as written. The bill should be amended to include the full range of enforcement authorities, including civil administrative, civil judicial, and criminal penalties and forfeiture. In addition, section 6(b), Penalties and Enforcement, H.R. 669 currently applies the penalty provisions from the Lacey Act Amendments of 1981 (16 U.S.C. §§ 3371-3378) by reference. This legal mechanism may be ineffective because the legal standards between this bill and the Lacey Act Amendments of 1981 differ significantly. For example, the two laws would apply to different activities. Section 3373 of the Lacey Act Amendments of 1981 penalizes violations of a "take" prohibition, whereas there is no take prohibition in H.R. 669. Conversely, H.R. 669 penalizes breeding and release into the wild, while the Lacey Act Amendments of 1981 do not have provisions addressing those activities.

The Lacey Act Amendments of 1981 also require a violation of an underlying law for a penalty to be imposed, whereas H.R. 669 stands on its own (i.e., a violation would not require a predicate offense). In some instances, section 3373 of the Lacey Act Amendments of 1981 specifically references the two-tiered structure of that law in outlining civil and criminal penalties, which would not apply to an enforcement action under H.R. 669.

For these reasons, a person could claim that they had insufficient notice of what acts would constitute offenses under the proposed. A court may refuse to apply penalties from a law that requires a two-step violation of certain specified acts to a law of one-step prohibitions covering different specified acts.

Finally, passage of H.R. 669 could set up two nearly identical but slightly different federal laws, both of which would have to be understood and complied with. This could be confusing for the public. For example, activities prohibited under this bill do not match up to those prohibited under the Injurious Wildlife provisions of the Lacey Act. Provisions for the public to petition to add a species to the list of injurious species also differ, both of which would still apply.

Funding and Staffing Needs

While the Service has not yet completed a full analysis of the funding and staffing needed for the agency to implement H.R. 669, we anticipate that funding and staffing will be significantly greater than that currently being committed under the Lacey Act's Injurious Wildlife provisions.

The fees provision in H.R. 669 allows for the recovery of costs to implement the program established by this bill. The Service notes that there will be costs for initiating the program, establishing the risk assessment process, and developing preliminary list of approved species, and carrying out law enforcement actions prior to collecting any fees or penalties.

Conclusion

In summary, the Service greatly appreciates the interest of Chairwoman Bordallo, the cosponsors of H.R. 669, and the Subcommittee in combating harmful invasive non-native species. The Service supports the general intent of H.R. 669 to develop a scientifically sound and proactive approach to prevent the continued introduction and establishment of harmful nonnative wildlife species into the United States and looks forward to working with the Subcommittee to address the Service's concerns.

Thank you, Madam Chairwoman, for the opportunity to testify before the Subcommittee on this issue, and for your support in preventing harm to the Nation's fish and wildlife resources from invasive species. The Service, in cooperation with other Federal, State, Tribal, and local agencies, and other partners, remains committed to addressing this significant threat to our natural resources, and we look forward to working with you as we continue our efforts in this regard.