TESTIMONY OF
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PET INDUSTRY JOINT ADVISORY COUNCIL
BEFORE THE
HOUSE NATURAL RESOURCES COMMITTEE
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Mr. Chairman and Members of the Subcommittee, I am Marshall Meyers, Senior Advisor and former CEO of the Pet Industry Joint Advisory Council (PIJAC). Thank you for inviting me to appear before the Subcommittee today to address the Department of Interior's proposal to establish a Categorical Exclusion under the National Environmental Policy Act (NEPA) for listing non-native species as "injurious wildlife" under the Lacey Act (18 U.S.C. 42, as amended).

PIJAC is a nonprofit, service-oriented national trade association representing all segments of the pet industry. These include importers and exporters of live organisms, retail pet stores, product manufacturers, other industry trade associations in the United States and abroad, as well as hobby clubs and aquarium societies. Our members serve 63% of the U.S. households that care for and maintain pets of all types, sizes and descriptions: the majority of which fall within provisions of the Lacey Act.

Pet owners across this Nation possess thousands of non-native (nonindigenous) species in significant numbers. This is not a new phenomenon. For generations, people have maintained a diverse array of non-native mammals, birds, reptiles, amphibians, and fish as companion animals. It is not the intent of the pet industry to intentionally release these animals into the natural environment. Nor would the vast majority of pet owners have any such intent. In fact, the majority of pet owners consider their pets family members. The empirical evidence demonstrates that the vast majority of these pet species pose little risk of release and establishment as injurious species.

The bond between pets and their owners is well documented – as are the benefits of this bond…greater mental and physical health among adults and greater socialization and learning skills among children. Furthermore, it is clear that children who grow up with pets develop empathy for animals and the environment in general. I have no doubt that the vast majority of individuals who are members of environmental organizations are also pet owners and developed their love for animals by the pets they grew up with.

Inasmuch as the pet industry is engaged in trading more live specimens of more species than any other industry, we recognize that part of our mission requires fostering environmental stewardship. Indeed, this is expressly encompassed by PIJAC's mission statement. That includes collaboration pursuant to a Memorandum of Understanding (MOU) with the Fish and Wildlife Service in educating not only our industry, but also our customers on the importance of not releasing animals into the environment.

In June of this year, PIJAC, the Association of Fish and Wildlife Agencies (AFWA), and the Fish and Wildlife Service (Service) executed an MOU to collaborate on the

development of non-regulatory approaches to reduce the risk of introducing/importing potentially invasive species not currently found in the United States. The MOU also provides that the parties will collaborate on voluntary biosecurity and mitigation practices designed to minimize the likelihood of release and establishment if such species enter the United States. The Steering Committee, Co-Chaired by AFWA and PIJAC, is currently preparing a 2013-2014 Action Plan.

It is important to note that the pet industry is not the only commercial or recreational group having a long-standing relationship with nonnative species. Other significant stakeholders dependent upon nonnative species include: sports fishing, federal/state hatcheries, agriculture, biological and biomedical research, entertainment, hunting, food aquaculture, zoos and aquariums, and classroom educators. While most of these organisms are never intended for release into natural environments, some of these species (e.g. oysters, trout, bass, deer, game birds) are intentionally placed into natural environments by government and private entities throughout the United States. Representatives of those communities are invited to support the MOU and become a signatory.

My involvement with the Service's implementation of its "injurious wildlife" authority under the provisions of the Lacey Act dates back to the early 1970s when the Service sought to list all non-native species as "injurious" until proven innocent on a species-by-species basis. We successfully challenged that approach on grounds that it lacked, among other things, a science-based justification and raised a number of substantial due process issues. Proving the negative has always been problematic! It would have placed an untenable burden on the government and/or the trade to "scientifically prove" a negative – i.e. the absence of current or any potential harm "to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or wildlife resources of the United States." (18 U.S.C. 42(a)(1))

Prior to seeking a Categorical Exclusion, PIJAC believes it would have been far more prudent, let alone informative, had the Service published in some form (preferably annotated) its listing criteria, including the process or processes utilized in determining environmental harm and concluding that a particular species is in fact "injurious" and warrants listing. Simply directing one to read the recent "Constrictor Rule" and accompanying documents is grossly insufficient.

Our historic and primary concern with respect to the Service's implementation of the Lacey injurious wildlife listing provisions is the total lack of statutory listing criteria as well as statutory processes (other than complying with the provisions of the Administrative Procedure Act) for assessing the species' characteristics, receiving public input and comments, documenting the evidence, disclosure of the rationale for listing, etc.

As noted in the Service's "Frequently Asked Questions" explaining why it is seeking a "Categorical Exclusion for Listing Species as Injurious Wildlife," an Environmental Assessment (EA) or Environmental Impact Statement (EIS) would only be needed "if the

action could have a significant effect on the human environment." While one would assume that completing an EA would be at a minimum fundamental to determining whether the listing of a proposed species has or could have a "significant effect on the human environment," simple logic dictates that finding a nonnative species "injurious" would by its very nature require a thorough and complete assessment of its impact on the environment as a condition precedent to any proposed listing. Thus, the Service's justification is somewhat baffling. In one breath, the Service argues it would only conduct an EA when, as, and if it determines (we assume without public notice and comment) that there is a "significant effect on the human environment," however, in another breath it argues it will not have to comply with NEPA because the species should not be here in the first place and "prohibiting a nonindigenous injurious species from being introduced into an area in which it does not naturally occur cannot have a significant effect on the human environment." The argument is specious. For species already present in the United States, irrespective of whether they were unintentionally introduced or intentionally imported for commercial or other purposes, prohibiting such species indubitably does have an impact on the human environment, and that impact should be evaluated.

So attempts to circumvent such assessments by adopting Categorical Exclusions for all nonnative species, absent some process for assuring NEPA-styled safeguards, defeats the underlying purpose of NEPA. Nor has the Service provided a compelling justification for abandoning its prior reliance on utilizing Categorical Exclusions on a case-by-case basis when the action did not warrant conducting a full blown NEPA analysis.

To add to the confusion of the Service's position is its recognition that "it has generally prepared EAs for listing rules…" and therefore "a categorical exclusion would allow the Service to exercise its authority…more effectively and efficiently by precluding the need to conduct redundant environmental analyses." This position could have merit depending on the criteria utilized and the scope of the initial Service assessment. If the Service does in fact conduct an EA or other NEPA-styled assessments, PIJAC acknowledges there may be benefits by minimizing redundancy by not having to simply replicate them under NEPA. However, the failure to conduct a NEPA-styled EA or EIS would allow the Service to bypass consideration of social, economic or other beneficial impacts taken into consideration within a NEPA process. The Service's concerns about redundant processes are belied by its FAQ statement, in which it indicates that it would not have to produce an EA to determine whether or not "a significant effect on the human environment" exists or could exist! What type of an assessment would the Service rely on other than an EA or an EIS to reach such a conclusion? The Service appears to be discounting the need for NEPA based on an alternative process that it then goes on to suggest would, itself, be unnecessary. Such disingenuousness confirms the worst fears of those concerned about the broad Categorical Exclusion being proposed by the Service: that the ultimate result will be no evaluation process at all or at best an extremely limited assessment!

Thus, we remain somewhat mystified by the Service's justification for seeking a Categorical Exclusion so it could avoid conducting an Environmental Assessment (EA)

on the basis that injurious wildlife listings to date have shown that the listings would have no significant effect on the human and natural environment. Assuming *arguendo* that this is accurate for past listings, other than the recent Constrictor listing decision, how can the Service predict a similar conclusion for all future listings, especially for species already in trade and/or in the United States? The apparent justification is based on the premise that "a listing action helps keep species out of the United States that are not naturally found here or helps prevent the spread of injurious wildlife into new areas within the country where they are not normally found…" therefore, *ipso facto*, they have "no effect on the environment.[1]" Such a conclusion, if it has any validity at all, could only apply to species not yet found in the United States. For species already present, whether unintentionally introduced or the result of importation years or even decades ago for commercial purposes, the rationale offered by the Service is wholly inapplicable.

The Service's argument is overly simplistic in justifying its desire to indulge in an "abbreviated review" of a proposed species listing and severely limits if not essentially precludes public input prior to the Service's publishing its conclusions in a proposed rule. While this would certainly streamline the process intended to keep out injurious wildlife or to prevent their spread across state lines, it would not make the process more effective but would, rather, undermine the fundamental tenants of NEPA, an Act that is relied upon to ensure a systematic interdisciplinary approach to decision making involving the environment. Indeed, eliminating due process will always "streamline" any legal procedure, but far from enhancing effectiveness it defeats the purpose of the process itself. NEPA's safeguards are far too important to be sidestepped by adopting a blanket Categorical Exclusion in this instance. What is being proposed goes far beyond the use contemplated by NEPA.

We are somewhat sympathetic to the Service's desire to avoid or minimize the degree of duplication that may result by complying with NEPA under all circumstances. There may be grounds for justifying a Categorical Exclusion when dealing with a species which is not present in the United States and for which the Service has demonstrated potential invasiveness if introduced into the environment of the United States. For species in trade or otherwise already present in the United States, utilizing Categorical Exclusions does not provide adequate safeguards to prevent the Service from systematically indulging in species' listings without full and complete NEPA-styled Environmental Assessments or Environmental Impact Statements when a significant impact on the human and natural environment has been documented or there is substantial controversy surrounding the science, its impact on the human environment, and the overall proposed listing.

PIJAC assumes that the Service relies upon different criteria for listing an unintentionally introduced species versus a species intentionally imported into the United States. Additionally, PIJAC assumes that the criteria for listing species not yet in the United States would differ substantially from species already in-trade and/or are possessed as pets or are maintained in some form of commercial or recreational activity, such as food aquaculture, sports fishing, bio-control agents, zoological exhibition, biomedical research, etc. Such listings are clearly not analogous and certainly deserve separate

[1] U.S. Fish & Wildlife Service Bulletin, dated July, 1, 2103

treatment. But nothing in the proposal demonstrates the manner in which these two completely different circumstances will be addressed. Absent such well-defined criteria as an integral component of an EA and/or an EIS, seeking a Categorical Exclusion for all potential scenarios simply cannot be justified.

For those species in trade or already within the United States an Environmental Assessment at a minimum is an essential tool for decision makers when evaluating the positive and negative environmental effects of a proposed action, including identifying one or more alternative actions that might be selected instead of a simple ban. Based upon those findings, a properly conducted Environmental Impact Statement would be required to address substantial controversies involving the scientific assessments, socioeconomic impacts, potential mitigation measures, environmental justice issues, or other mechanisms for regulating or limiting access to such species. A glaring weakness in the Service's justification of their proposal is the failure to give due consideration to the balancing act that a NEPA assessment is meant to provide; that is, not only the potential for harm due to a species' presence, but also the benefits such presence brings as well.

In our opinion, an Environmental Assessment is a critical and essential component of any evaluation of a nonnative species as a potentially "injurious wildlife" species. Circumventing a process that incorporates NEPA-styled processes under the theory that keeping "species out of the country that are injurious or to prevent their spread across State lines" is ill conceived when dealing with species in-trade or already within the United States. For such species, the Service cannot legitimately claim such action would have no effect on the human and natural environment because the species' being listed are not normally found here when in fact such species are already present, often in significant numbers. How would the Service determine that such species are harmful to the named interests under Lacey without conducting an EA? How can it conclude that its proposed action does not individually or cumulatively have an impact on the human environment absent receipt of public comment and completing some form of an assessment subject to public comment? Again, the NEPA assessment must weigh not just potentially negative benefits of a species, but the positive benefits of such species as well.

The simplistic approach of ignoring a NEPA-styled EA or EIS essentially disregards from the outset any benefits that may result from trade in many non-native species. Moreover, if the Service can simply find a non-native species injurious without ascertaining the scope of its harm (e.g. it impacts a significant portion of the United States vs. being regional or found locally negatively impacting a single thermal spring,) or take into consideration alternatives as contemplated under NEPA, the Service's approach falls far short of any claim that its decisions are transparent, science-based, or have thoroughly evaluated whether there are any positive or negative impacts on the environment.

The pursuit of a more efficient and effective process under the Lacey Act requires a thorough overhaul of an outdated law not geared to a modern economy or today's world. Listing criteria for species in trade should be significantly different than for species not in

trade or not yet found within the United States. Once in trade, however, the Service should not circumvent processes that promote collaboration, transparency, and sound science-based decision making. Simply reducing the time to process a listing should not be the goal – improving the risk assessment processes, enhancing transparency, and encouraging increased collaboration by engaging stakeholder involvement in the process should be the desired objective. Until this Act is updated, an effective, thorough, and transparent evaluation process is that much more critical. Inasmuch as the Lacey Act's injurious wildlife provisions are conspicuously silent as to the criteria for listing or evaluating the environmental impacts/benefits, NEPA is an essential safeguard to ensuring a rigorous assessment evaluating all relevant information and reliance on scientific integrity, public input, and transparency at various stages of the decision-making process.

PIJAC has long advocated updating the injurious wildlife listing process by differentiating between first time introductions/importations and species already in international trade or present in the United States. PIJAC has served on the Invasive Species Advisory Committee since its inception and recognizes the need for tools that facilitate more effective and efficient listings. Shortcutting the process by not automatically conducting an EA to ascertain injuriousness, as well as conducting an EIS when the species is in international and/or domestic trade or otherwise exists in the United States for recreational purposes, pets, research, zoological exhibition would create a severe risk of unnecessarily restricting species that not only represent no harm but in fact offer substantial benefits to the people of this country. For species in trade or already in the United States, the Service should automatically conduct a NEPA-styled EA as well as an EIS as a matter of course. And this does not mean that the process would have to be duplicated under NEPA. The Service would be able to continue its practice of NEPA compliance as it has in the past.

It is our position that the Department should step back, withdraw this proposal, and consider convening stakeholder meetings to explore how the listing process can be improved consistent with law and resources, improve transparency, seek public input at different stages of the process in lieu of publishing at one time a proposed rule containing the Department's conclusions and findings along with the Service's Draft Environmental Assessment, Draft Economic Analysis, Initial Regulatory Flexibility Analysis, etc. By shifting injurious listings to a Categorical Exclusion and the non-development of an EA, there is very limited, or even no, disclosure of environmental impacts, including social impacts, environmental justice issues, and impacts to disadvantaged communities in the Service's reaching its ultimate determination. A Categorical Exclusion assumes that none of these occur and the public could be precluded from submitting comments in an informed way on impacts normally disclosed in an EA. Eliminating any chance of public meetings even when the issues are highly controversial, subject to scientific debate and disagreement,

On behalf of the Pet Industry Joint Advisory Council (PIJAC), we thank you for providing us an opportunity to share our thoughts and concerns on utilization of a blanket Categorical Exclusion for injurious wildlife listings. We recognize and support the need

to improve the injurious wildlife listing process, but do not believe that this is the most efficacious or proper approach. As mentioned previously, at best there should be

1) a tiered process evaluating species not present in the United States from species in-trade or otherwise already present in the United States;
2) adoption of and clear enunciation of the listing criteria and processes that encompasses the elements that the Service claims are duplicative under NEPA as an integral part of the Service's procedures and protocols for listing injurious wildlife; and
3) for species in trade or otherwise present in the United States incorporate in the Service's protocols a mandate for public input at various stages of the process to ascertain which issues, if any, involve questions of scientific debate and integrity, highly controversial issues with respect to significant impacts on the human and natural environment, and ensure that highly controversial issues are thoroughly vetted in an open and transparent fashion.

Despite our reservations about the Service's position on this matter, we remain committed to working with the Subcommittee and the Service to address this important environmental issue.

Thank you again for inviting me to appear today. I would be happy to answer any questions.