

Statement of David G. Barker
Before the House Committee on Oversight and Government Reform
September 14, 2011

Thank you very much for this opportunity to testify on the significant adverse impacts on small businesses of the U.S. Fish and Wildlife Service's (FWS) proposal to list nine species of constricting snakes on the Injurious Wildlife List under the Lacey Act.

I am a herpetologist by training and author of numerous books and articles, both for scientific journals and the popular press. I am also the founder, along with my wife, of Vida Preciosa International, Inc., a commercial enterprise that specializes in the research and captive-propagation of pythons and boas. The testimony provided is based on my extensive fieldwork and research over several decades and experience in the reptile industry. Additionally, I am a member of the U.S. Association of Reptile Keepers (USARK), a trade association representing all segments of this industry, including its reptile breeding, retail, transportation, equipment manufacture, trade show promotion, medical supply, herpetological veterinary, and wholesale sectors. USARK has been in the forefront advocating against this proposed rule, working with other groups such as the Pet Industry Joint Advisory Council (PIJAC) and the Association of Zoos and Aquariums (AZA). I will also reference research and information compiled and submitted by USARK during this process.

FWS's proposed regulation lacks a scientific basis, being based on a single flawed study that has not withstood scientific review. More recent research contradict these findings. The rule was also developed without adherence to the Regulatory Flexibility Act (RFA). FWS failed to estimate the rule's costs and economic impacts on the small business community and to explore less burdensome alternatives offered by the industry. For these and other reasons, the proposed listing fails to meet President Obama's announced standards for scientific integrity and data quality, regulatory guidance, and minimization of impacts on small businesses.

Most importantly, this misguided regulation will destroy an entire industry, comprised almost exclusively of small and micro businesses. Its economic impacts, based on past industry growth, will amount to losses of between \$505 million and \$1.2 billion over ten years. Speaking personally, it will criminalize virtually 90 percent of my sales and affect a regulatory taking of my breeding stock and equipment. In short, if this rule goes into effect, it will destroy my life's work and investments for no rational reason.

The Regulation Lacks a Scientific Basis

Based on my own and others research, I can confidently state that the FWS proposed listing is utterly lacking in a scientific basis. It has been put forward on a widely discredited study by a U.S. Geological Service (USGS) scientist in 2008 purporting to find that as much as a third of the continental United States could provide suitable habitat for these nine species of pythons, anacondas and boa constrictor. From that, FWS concluded these snakes could become established and pose a danger to native wildlife, justifying the proposed Lacey Act listing.

In point of fact, there have been at least four subsequent studies – three of which were co-authored by government researchers or academic researchers under contract to U.S. Department

of the Interior agencies – that undermine the USGS study. They all support the incontrovertible fact that these snakes are highly intolerant to the cold, failing to survive in temperatures as high as forty degrees Fahrenheit. The fatal flaw with the USGS study, which was based on “climate matching” – or identifying regions of the world to which these snakes are indigenous to similar climates in the United States – is principally that it relied on mean monthly temperatures. It failed to account for persistent low seasonal temperatures throughout the U.S. that make all areas save for the most southern regions of Florida and Hawaii utterly inhospitable for these animals.

Only two of the nine species listed in the proposed action are thought to have become established. Burmese pythons are believed to be tenuously established in the Everglades region and a small population of boas may be established in a 20 acre glade of trees in a Miami city park. Genetic testing of Burmese pythons from the Everglades region shows that the population was introduced to Florida prior to 1994; the introduction most likely came from the accidental release of captive-bred babies from reptile distributor’s facility by Hurricane Andrew in 1992. Despite the relatively long establishment of these populations, these snakes have not extended their range beyond this narrow band. No attempt has ever been made to eradicate either of these species since they were first discovered.

Furthermore, despite the legitimate concerns over the establishment of these non-native species within the Everglades ecosystem, there has been no empirical evidence that their presence has threatened the ecosystem or caused any serious disruption. In fact, due to the particular harsh winters this year and last, it has been virtually impossible to find any boas or pythons in these areas. Despite intensive search efforts and even an open hunting season on these snakes, very few have been seen in Florida since 2009. Even the popular television show Python Hunters has had to turn its attention to other species and other localities, because pythons have become very scarce in the Everglades. Needless to say, despite decades of pet ownership of boas and pythons, they have not become established anywhere else in this country.

In short, the FWS proposal is a job-killing solution in search of a problem.

This Issue is Appropriately Addressed by the States

The general admonition to “not make a federal case out of it” applies strongly in this instance. States are well situated to allow, prohibit, or regulate this industry as they see fit. Thus, for instance, the State of Hawaii bans ownership, possession, or importation of any of these snakes. Texas uses a permitting system, controlling access to ownership of many of these snakes. Florida, which has the only established population, has likewise largely banned private ownership. In each instance, the law has been tailored to address important interests identified by these states’ citizens.

It is instructive to note, however, that even Florida does not impose a restriction so sweeping as that proposed by FWS. Florida law allows for the display of such snakes, including allowing private individuals to bring these species into the state under certain controlled circumstances. This exception allows for the continuation of annual reptile trade shows held in the state, such as the major show in Daytona that just recently concluded. These trade shows¹ are economically

¹ There were over 300 reptile trade shows held across the United States last year.

important both to the industry (in terms of sales of snakes, equipment, supplies, and services) and to the locations that host them.

Florida has struck a balance that protects both its environment and regionally important economic activity in a manner that best suits it. FWS would deny states the right to make such a choice. The agency would also harm businesses in regions in which there is no chance of these constricting snakes to become established—the rule applies equally to Alaska and Florida; to Maine and Hawaii. Given the abundance of peer reviewed science, the virtual non-existent risk in pet ownership, and the current importance of the jobs and economic activity this industry provides for tens, if not hundreds, of thousands of Americans, the Lacey Act rule should be withdrawn.

A Lacey Act Listing of These Snakes Will Devastate an Entire Small Industry

The modern U.S. reptile industry has grown rapidly over the past two decades. The number of U.S. households that own a reptile rose from 2.8 million to 4.7 million from 1994 to 2008, an increase of 68%. In contrast, the number of households that own any kind of pet increased only 35% over that same period. Today, this sector of the pet industry has become increasingly complex, generating annual revenues approaching \$1.4 billion. The prime movers fueling this growth are small, predominately American businesses.

Many of these businesses began as captive breeding operations run by reptile enthusiasts and hobbyists. Over the years, these businesses have expanded their customer base to include foreign reptile breeders and pet owners.

Of the overall market for reptiles, the component comprising the nine species proposed to be listed is estimated to comprise about 11%, generating over \$100 million a year in economic activity. It is comprised of importers; captive breeding operations such as my own; specialized herpetological veterinarians; rodent breeders and distributors; manufacturers of food pellets, lighting, terrariums, terrarium decorations, heating products, vitamins and supplements, thermostats, snake hooks, sexing tools, and humidity products; specialized transport companies; trade show organizers and promoters; and others. Ninety-nine percent of the affected businesses qualify as small businesses under the Regulatory Flexibility Act (RFA).

Under the proposed rule, a significant portion of this business will be lost. This industry is driven by high-valued snakes specially bred for unique colors, patterns, albinism, and other traits. These so-called “morphs” can fetch hundreds and even thousands of dollars from collectors, both domestically and abroad. At the highest end, prices rise to the tens of thousands of dollars for an animal. If the Lacey Act listing is adopted, this sector will die and thousands of small breeding operations will be left with inventories of snakes and specialized equipment that will be virtually worthless.

Because FWS failed to produce any estimates of the size and value of the industry, much less develop any meaningful measure of the costs and benefits of the regulation, the industry itself bore the cost of producing an economic analysis. A copy of that report, produced by Georgetown Economic Services, will be submitted for the record. The study found that almost 60% of all sales involved interstate commerce. Thus, under the most charitable economic

assumptions, lost revenue impacts will range from \$42.8 million to \$58.7 million annually. However, given the fact that such interstate sales comprise such a large portion of total revenue, more realistic annual revenue losses range from \$75.6 million to \$103.6 million.

In my own personal circumstance, if the proposed rule is implemented, it will directly and negatively affect my wife's and my incorporated small business and our family income. About 90% of our business is derived from interstate and international sales. This regulation will thus destroy some 20 years of work and essentially confiscate the value of our investments in breeding stock and equipment. Conservatively, our family income will be immediately slashed by 35% at a time when income and work come hard and negatively impact our retirement. Additionally, our business is interconnected with many other local businesses, large and small, that also will suffer economic harm. Nationally, there are thousands of other families with small snake-breeding businesses similar to ours.

FWS utterly failed to take any hard look at these economic impacts and failed to consider reasonable alternatives to federal regulation offered by the industry. This is not just my opinion, but also that of the Small Business Administration's Office of Advocacy. In a strongly-worded comment letter (also submitted for the record), the Acting Chief Counsel for Advocacy, Ms. Susan Walthall, and the Assistant Chief Counsel, Ms. Jamie Belcore Saloom, found that FWS:

1. Failed to "adequately describe the impacts of the proposed rule on small businesses";
2. Did "not discuss significant alternatives to the proposed rule";
3. Did "not properly identify the small entities directly affected by the rule"; and
4. "Underestimates the economic impact on small entities."

They concluded: "Advocacy believes that the proposed rule will have a significant [adverse] economic impact on a substantial number of small entities that has not been fully examined by FWS." By my reading, the Office of Advocacy is politely saying that FWS violated the law.

Advocacy's well-founded conclusions were based not only on a review of the agency's RFA analyses, but a full "round table" discussion with representatives of many sectors of the industry. Unlike FWS, the Office of Advocacy took the time to understand the industry and the impacts this Lacey Act listing would have on our businesses. We would likely not be in this position today if FWS had taken a similar approach.

FWS's Proposed Regulation is Inconsistent the Administration's Regulatory Guidance

Finally, given that this Committee is also hearing from Mr. Cass Sunstein, head of the Office of Information and Regulatory Affairs (OIRA), it is worth noting that his office has an important role in this particular rulemaking. Not only is OIRA responsible for implementing the President's regulatory policy, but it is currently actively reviewing FWS's proposed listing rule. Indeed, it has been doing so since about April when USARK met with Office of Management and Budget (OMB), FWS, and Interior Department officials.

I appreciate that the OMB is taking a hard look at the FWS proposal, assuming it is an indication that the concerns raised by the various associations – USARK, PIJAC, and AZA – are being taken seriously. However, the uncertainty that its prolonged review has caused is virtually the same as having the rule in place. With no final decision, business for me and others have dropped precipitously as buyers are unwilling to make investments or purchase snakes whose transportation may be criminalized. We hope that OMB and OIRA will reject the proposed rule as inconsistent with Administration policy and the law, and do so now.

There are good reasons for this outcome. Submitted for the record is a copy of a letter USARK sent to Mr. Sunstein detailing the ways in which FWS failed to adhere to the procedural and substantive requirements of, for example, President Obama's January 18, 2011, Memorandum relating to small businesses and job creation, Executive Order 13563 reaffirming the general principles of regulatory philosophy and review, and the President's recently announced standards for scientific integrity.

With respect to scientific integrity, I note that I assisted in filing a detailed challenge to the USGS study under the Information Quality Act (IQA). Both the initial challenge and the industry's appeal were completely rebuffed by FWS and the Interior Department. Unfortunately, the IQA lacks teeth, providing business with no recourse when meritorious challenges to poor science underlying rules with major impacts are summarily rejected by federal agencies. I would ask Congress to consider strengthening the IQA.

Concluding Thoughts

A little discussed issue regards the disaster that may follow the implementation of the proposed action. What will happen to the million animals that are suddenly without value? Many, of course, may be maintained into the future as pets by their current owners. But what will be the outcome for animals that suddenly are unwanted or unaffordable? Some of the larger snakes can live in excess of 30 years. The proposed action makes no provision for the disposal of the animals. Zoos will not take even one. Animal shelters are completely unprepared and generally without trained staff, equipment, cages, or food. The implementation of the proposed action may precipitate the greatest slaughter of pet animals in American history.

Finally, I, like many others who are passionate about snakes and reptiles and who have made this their life's work, spend a large amount of time in educational activities and providing other public services. We introduce students to these magnificent creatures, assist zoos and aquariums in care, maintenance, and supply, aid conservation efforts, and publish articles, both for the scientific community and the general public. If this rule is adopted, all these valuable services will be lost, along with American jobs and the American dream for thousands of people. These "costs" – both human and monetary – are not offset one iota by this misguided rule that utterly lacks a single benefit. With this rule, we will be a poorer nation in all senses.

I thank you very much for this opportunity to testify on this very important matter. If there is any further information that would assist the Committee in its work, I will do my very best to provide it.