TESTIMONY OF
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PET INDUSTRY JOINT ADVISORY COUNCIL
BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
HOUSE NATURAL RESOURCES COMMITTEE

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Madam Chair and members of the Committee, I am Marshall Meyers, Executive Vice President and General Counsel of the Pet Industry Joint advisory Council (PIJAC). Thank you for inviting me to submit comments on the Nonnative Wildlife Invasion Prevention Act (HR 6311).

PIJAC is a non-profit service-oriented organization comprised of members who care about pets and the pet industry. As a national trade association, PIJAC represents all segments of the pet industry: companion animal importers/exporters/breeders, wholesale distributors, product manufacturers, retail outlets, and affiliated hobby clubs, aquarium societies, and other industry trade associations. Our members serve the 63% of the U.S. households that care for and maintain pets of all types, sizes and descriptions: the majority of these pets fall within the purview of the regulatory system contemplated in HR 6311.

PIJAC's explicit mission is to:

> "Promote responsible pet ownership and animal welfare, foster environmental stewardship, and ensure the availability of pets."

The pet industry, like several other industries, is dependent on the importation of non-native species, most of which are farm raised. Pet owners across the US possess a wide variety of non-native species in significant numbers. This is not a new phenomenon. For generations, people have maintained a wide variety of non-native mammals, birds, reptiles, amphibians, and fish as companion animals. Unlike some industries dealing in nonnative species, it is not the intent of the pet industry or the majority of pet owners to place or release these animals into the natural environment.

Background

PIJAC is well aware of the problems posed by invasive species. Our involvement with this issue dates back to the early 1970s when the US Fish and Wildlife Service (USFWS) published a proposed list of "Low Risk" wildlife. Like HR 6311, that proposal would have banned all wildlife not otherwise appearing on the clean list as being "injurious" (invasive) under the Lacey Act. We challenged that approach because (1) it failed to provide science-based support for how it classified "low" versus "high" risk species, and (2) it was premised upon broad-based conclusions that all nonnative species were *per se*

injurious until proven innocent. We successfully challenged the proposed regulatory action by making government officials and stakeholders aware of the fact that it placed an untenable burden on the trade to "scientifically prove" a negative – i.e. the absence of harm.

For many years, PIJAC has been providing leadership on invasive species issues, serving as an advisor to and collaborator with numerous government agencies. The PIJAC staff serves on various Aquatic Naissance Species Task Force (ANSTF) committees and regional panels, the Invasive Species Advisory Committee (ISAC) and a number of State invasive species advisory committees or working groups. Additionally, PIJAC leads several initiatives and proactive campaigns designed to minimize the introduction and impact of invasive species. These campaigns reflect a strong collaborative effort between industry, the government, and other stakeholders.

PIJAC believes that effective measures should be in place to reduce the risk of the adverse impacts of invasive species. We further believe that the appropriate directives for risk management are contained in the Lacey Act, the National Invasive Species Management Plan (per Executive Order 13112), and several ANSTF initiatives, among others. As we have testified previously, the requisite human and financial resources have yet to be made available to the relevant federal agencies so that they can fully and effectively implement and enforce existing policies and programs. Until the government is willing to invest in implementation and enforcement of the regulatory measures it has already enacted, additional regulations will serve only to cripple an already faltering system.

With regard to HR 6311, first and foremost I note that it reckons back to a failed, technically flawed approach of the early 1970s. As previously mentioned, it imposes on persons interested in importing or possessing a species for commercial or non-commercial purposes the task of having to scientifically prove a negative – that the species will not cause harm or be likely to cause economic or environmental harm or harm to human and animal species' health. Simply on the grounds of "Statistics 101" this is unworkable. Absent a crystal ball, it is impossible to prove conclusively that no harm has ever nor will ever occur at any time, anywhere in the United States.

Thousands of non-native species have been in the pet trade for decades, yet the overwhelming majority of them have never established feral populations and even fewer have been demonstrated to have caused harm to the environment, economy, or human health. In rare instances where former pets have become invasive, the impacts have generally been to localized areas in urban and suburban contexts which are already heavily impacted by habitat loss and degradation.

It is, thus, both unnecessary and unrealistic to conduct a risk assessment for every non-native species in the pet trade (e.g., more than 1600 freshwater fish), let alone those brought in by other industries as well.

While we recognize that the Lacey Act process is inefficient in many ways, it is clear to us that this is largely due to the lack of capacity both in terms of staffing and funding. Because HR 6311 mandates a far more comprehensive process than currently exists under the Lacey Act, it is set up for failure. If enacted as drafted, HR 6311 would force the Fish and Wildlife Service into a managerial nightmare. It would have to:

1. conduct risk assessments on more than 10,000 species currently in trade, many of which are not even scientifically identified to the species level let alone extensively studied, and complete those assessments in time to meet the statutory deadlines set forth in Sections 3 and 4; or, upon failure to do so,
2. shut down a number of industries dependent upon nonnative species -- such as the pet industry, food aquaculture, and sports fishing.

Even if there was ample scientific information available to enable the risk assessment process, it is clear that the USFWS would not be physically able to complete a sufficient number of species assessments given its extremely limited staff and financial resources. It is also readily apparent that industries cannot exist on a handful of imported species for the short or long-term.

HR 6311 is an overly simplistic approach to a very complex problem which involves much more than running a series of risk assessments in order to publish a list of approved species. The socio-economic, as well as biological, issues impact hundreds of millions of Americans and a more reasoned approach is needed to address the invasive species conundrum.

I, therefore, urge the Committee to take into careful consideration the findings and recommendations of the National Invasive Species Management Plan, as well as initiatives of the Aquatic Nuisance Species Task Force and numerous state agencies that are dealing with this issue. Initiatives under these programs already reflect stakeholder-inclusive reviews on and recommendations to address the import of live organisms in the invasive species context.

For well over a decade, government and industry have been working collaboratively to enhance prevention, improve early detection and rapid response, develop screening mechanisms applicable to different animal types, identify pathways and pathway related problems, and increase public awareness on the importance of not introducing nonnative species into the environment. A major component of that process is recognizing that screening or risk analysis must be carefully constructed to ensure that the analysis is science-based, credible, transparent, involves stakeholders, and evaluates and promotes viable management policies. In our opinion, HR 6311 has the potential to jeopardize and set back achievements of the past several years.

For example, the 2001 National Invasive Species Management Plan (Plan), was developed through a transparent, science-based, stakeholder-inclusive process. It was intended to provide a constructive way forward for Federal agencies and partners to minimize the impact of invasive species in a manner that was timely, practical, and cost-

effective. Plan developers concluded that a phased-in screening approach was the most effective way to reduce the risk of import of potentially invasive species. In the first phase of the process, relevant Federal agencies would work with stakeholders to screen species proposed for first-time imports into the US. Three years later, the second phase would broaden the approach for the systematic screening of species already in trade. PIJAC encourages members of Congress to review the Plan, and meet with NISC Policy Liaisons and original members of the Invasive Species Advisory Committee (ISAC) in order to garner a better understanding of the process already agreed to by Federal agencies and stakeholders, as well as the underlying basis for the decisions made – such as the lack of scientific data, staff capacity, and economic implications.

If Congress decides to ignore the Plan, then we urge that HR 6311 be redrafted to direct a risk analysis process rather than a risk assessment. According to the definitions adopted under the Convention on Biological Diversity (and supported by the US), "risk analysis refers to: (1) the assessment of the consequences of the introduction and of the likelihood of establishment of an alien species using science-based information (i.e., risk assessment), and (2) the identification of measures that can be implemented to reduce or manage these risks (i.e., risk management), taking into account socio-economic and cultural considerations."

As evidenced at several recent meetings dealing with screening processes and other analytical approaches, it has become abundantly clear that such a process is complex and that there is not agreement within the scientific community or other interested parties on how to deal with this complex problem. Screening is one part of the process; risk management and evaluating socio-economic issues and other benefits is equally important and challenging. We do not believe that this can simply be resolved via legislation mandating criteria that needs to be subject to scientific and legal scrutiny. That should be left to the regulators.

Unless socio-economic and cultural considerations are adequately accounted for in this process, numerous domesticated animals (e.g., domestic cats and livestock) are likely to qualify for the "black list" as there is considerable scientific data to indicate that these nonnative wildlife species (as currently defined by HR 6311) have caused substantial economic harm when they become feral. Furthermore, there are already management measures in place for some species that would reduce the risk of invasiveness. For example, ferrets that are spayed/neutered cannot establish viable populations. Finally, in the current economic environment, Congress must carefully consider both the financial costs and benefits of imported species. The loss of certain high-income fish, for example, could result in the collapse of the entire ornamental fish industry and have significant repercussions for product manufacturers, distributors, and retailers throughout the country.

Understanding the broad biological and socio-economic implications of developing lists of approved and unapproved wildlife species, countries such as Australia and New Zealand explicitly employ risk analyses. Reference materials for their programs are readily available on the Web.

The following comments address key sections of HR 6311.

Risk Assessment Process (Section 3)

PIJAC questions the advisability of the Congress mandating specific criteria that the Secretary must factor into the Department's assessment protocols. As evidenced by the work of the Invasive Species Advisory Committee and the ANSTF. The Department's scientists need flexibility to design analysis protocols depending on the taxa, the purpose of introduction, and other relevant factors. A "one-size-fits-all" set of factors will not enable an effective result.

For example, it is not technically feasible to identify some species in trade – including some very high volume and income species – to the "species level" (Section 3(b)(1)). Many armored catfish, a staple of the aquaria trade, are only identified with "L" numbers; they have not been scientifically described. Nor is it clear how the prescribed process would deal with taxonomic name changes in cases in which molecular studies indicate that the classifications should either be "split" or "grouped." If the scientific classification changes, would the risk analysis have to be repeated for the affected species? Furthermore, how would agency staff address the fact that some countries (particularly developing, exporting countries) are using different taxonomic names (often "old" versus "new") than others?

Section 3(b)(2) requires information on the "geographic source of the species and the conditions under which it was captured or bred." Is this section designed to identify the evolutionary origin of the species, the geographic location of its initial export, or the last country of export before entering the United States? What is the relevance of analyzing the "conditions under which it [the species] was captured?" Is this introducing an animal welfare element into the risk analysis process?

Section 3(b)(3) incorporates terms such as "established," "harm" and "spread" without the benefit of definitions. Is the USFWS free to adopt its own definitions? Does "established" mean a self-sustaining reproducing population? Is an analysis as to benefit versus harm part of the evaluation?

Sections 3(b)(4) through (10) incorporate the subjective, non-scientific standard of "likelihood" for determining the probability that a species will become established, spread, do harm, or be accompanied by a "pathogenic species, parasite species, or free living species…" Does "likelihood" connote some level of probability – a specific statistical term – or is it merely a subjective conclusion that something might establish, spread, cause harm or be accompanied with parasites? The mere presence of parasites or other associated organisms is not necessarily problematic. Furthermore, an extremist could argue that any species has some probability of establishing somewhere in the U.S. given the right ecological conditions and propagule pressure. If that probability in scientific risk-based terms presents a negligible risk, how is it assessed under the "likelihood" doctrine? What methods would be used to determine or score "likelihood?"

Section 3 sets forth specific factors that must be taken into account in the USFWS's evaluation of risk but offers no direction as to the manner in which such factors must be evaluated. A reasonable inference, however, is that a positive finding of one or more of those factors is sufficient to prohibit import. Far greater statutory clarity is required. Is the USFWS compelled to list a species as prohibited in any case in which some combination of these factors are determined in the affirmative? Is the mere absence of biological data, because it does not exist, sufficient to compel the USFWS to ban a species that has been imported in the millions or farmed in this country for 30 to 50 years absent evidence of invasiveness?

Based on such a standard, common goldfish, many tropical fish, and myriad common species of birds and reptiles would be banned from the entire United States if it could be demonstrated that under Section 3(b)(4) there is a likelihood that "environmental conditions suitable for the establishment or spread…exist anywhere in the United States." Marine organisms would be banned in Kansas because they might become established in Hawaiian waters; a parakeet would be banned in Minnesota because it could survive in south Florida. Absent inclusion of some qualifying language, the factors become mandates and mandates become prohibitions even though a likely adverse impact is never shown.

Transparency (Section 3(d))

Transparency is critical to the credibility of the process being mandated by this bill. Stakeholder involvement at all stages of the process is essential to attain the level of transparency recommended by the National Academy of Sciences' National Research Council. PIJAC urges that language be inserted making it abundantly clear that there is stakeholder involvement at all stages of the process. Furthermore, language should direct that the persons making the management decisions are not the same people conducting the risk assessment(s).

List of Approved Species (Section 4)

The concept of assessing first-time introductions surfaced during the ANSTF "Intentional Introductions Policy Review" in the mid-1990s. In a report to Congress in 1994, the ANSTF focused on two main concerns:

1. "the need to make ecologically credible decisions; and
2. the need to strike a balance between greater risk reduction and accommodating current activities and economies that depend on the use of nonindigenous species."

The ANSTF went on to conclude that:

1. "to the maximum extent possible, the decisions should be based on ecosystem considerations; and
2. the recommendations should generally apply only to ***new introductions."*** (emphasis added)

The ANSTF further recommended establishing a Federal permit system for first-time imports coupled with a credible, science-based review process, and called for improvements in implementing the Lacey Act to include, *inter alia,* expediting the injurious species listing process, fostering compliance through clearer listings, and initiating a review system for species not listed. The ANSTF also made a series of proactive recommendations, including adoption of good business practices through codes of conduct promoting "continued commercial operations in a manner that is compatible with the conservation of natural ecosystems" such as education and public outreach programs targeting invasive species issues.

The National Invasive Species Plan incorporated that concept following lengthy deliberations among the Invasive Species Advisory Committee (ISAC) and National Invasive Species Council (NISC). The Plan, at page 32, specifically calls for

> "…the development of a risk-based screening process for intentionally introduced species in a series of steps or phases. During the first phase a screening system for first-time intentional introductions will be developed…The screening system will then be modified…during the second phase to deal with species already in the U.S."

Several iterations of bills amending the National Aquatic Invasive Species Act (NAISA) incorporated the establishment of a "catalog" of organisms in trade. That was to be accomplished as a collaborative effort involving the Fish and Wildlife Service and concerned stakeholders. The language which subsequently appeared in at least five bills in the House and the Senate was agreed to by a diverse group of stakeholders including various nongovernmental environmental organizations. Any species not appearing on that list would be subject to a screening process as a first-time introduction. The screening process would evaluate the "probability of undesirable impacts."

That legislation did not exempt species appearing in the catalog from risk assessment and possible listing under the Lacey Act. Rather, the catalog was to ensure that species that have been in trade with no apparent ill effects would not suddenly be prohibited absent a science-based risk analysis. This was recognized as the only reasonable and feasible method of addressing thousands of species that have long been imported into the United States and for which no adverse consequences have been identified. Moreover, a number of species in trade have been captive raised within the United States for decades with no demonstrated detrimental impacts.

Section 4(c) provides a mechanism to add nonnative wildlife species to the approved list and requires the Secretary to make a determination "in a reasonable period of time" in accordance with the Section 3(b) factors. PIJAC urges the insertion of a specified time frame within which the USFWS shall make such determinations, similar to time limits imposed under other laws. If history is prologue, there is a high likelihood that few new additions will be made to the list absent a statutorily imposed deadline, and perhaps not even then.

When a list is published will there be any grace period for an importer or person possessing listed species already in the United States to revamp their operation(s) and ethically dispose of animals in their possession or do they become violators of this Act, as well as the Lacey Act, overnight? The perception, alone, that this would be the case is likely to motivate frightened individuals to abandon animals. In short, it could facilitate the introduction and establishment of numerous non-native species.

Deadlines (Sections 3(e) and Section 4(a)(1)).

The prescribed timeframes to implement HR 6311 are unrealistic. According to Section 3(e)(1), the proposed regulations and an initial list of approved species must be published within two years of enactment of HB 6311. The final regulations, the initial list of approved species and a notice of the list of prohibited species must be published, pursuant to Section 3(e)(2), no later than 30 days before the date on which the Secretary begins assessing the species . The assessment process must start within 37 months of HR 6311's enactment (Section 3(e)(3). Yet Section 4(a)(1) mandates that the list of approved species be finalized and published no later than 36 months following enactment. How is this possible?

History has demonstrated that agencies are often unable to comply with such mandated timeframes. Will the USFWS be provided adequate appropriations to fund this initiative? How will the USFWS be able to develop regulations, publish them in the Federal Register seeking public comment, review and finalize the regulations, seek and obtain OMB clearance and publish final rules and lists within such brief timeframes? To date, the USFWS has required an average of four years to accomplish such a process for a single species proposed for injurious wildlife listing.

The NISC and ANSTF approaches referenced earlier alleviate the USFWS' need to expend significant effort assessing species documented as being in trade and allowed it to concentrate on first time introductions as well as go back and selectively review and assess any of the species in the catalog. The USFWS was not subjected to a series of artificial time frames it could not meet. We recommend a return to the previously agreed upon Catalog approach as a more workable mechanism – a mechanism that is science-based, measurable, transparent and implementable.

List of Unapproved Species (Section 5)

Section 5 calls for the Secretary to publish a list of nonnative wildlife species prohibited or restricted from entering the United States. The list would incorporate those species listed under the Lacey Act as well as any other species added pursuant to this Act. Is this intended to be an amendment to the Lacey Act?

Since violations of the proposed Act would also constitute a violation of the criminal provisions of the Lacey Act, full and complete lists of what is legal and illegal should be published by the USFWS to ensure adequate notice of what constitutes a violation of law.

Due process calls for no less. To ensure proper notice and avoid confusion, the approved and unapproved lists should contain every species in the animal kingdom to ensure that the public is aware of what is illegal as well as legal inasmuch as they are subject to a strict liability criminal statute.

Prohibitions and Penalties (Section 3(f) and Section 6(3), (5) and (6)).

Interestingly, a person already engaged in the captive propagation or farming of a species in the United States that does make the "approved list" finds him or herself in the rather awkward position of being subject to conflicting provisions of the law. According to Section 3(f), the "Act shall not interfere with the ability of such people to possess an individual animals of a species that was imported legally." Yet a close reading of the prohibitions in Section 6 raises significant issues which will undoubtedly compel millions of frightened people to kill or abandon their pets. Once a species appears on the "unapproved list," the imaginary grandfather clause of Section 3 apparently evaporates because it would be illegal to breed, possess, sell, barter any nonnative species appearing on the Section 4 prohibited list!

The prohibition section will significantly impact not only the pet industry, but also food aquaculture, sport fisheries, the bait industry, and the livestock industry. These sections need to be revisited.

Fees (Section 8)

The establishment of a fee-based risk assessment system is fraught with problems. Apart from trying to ascertain how the amount of the fee(s) will be determined, this system will result in rank discrimination whereby small business will no longer be able to compete. It places the entire financial burden on larger companies willing to assume the financial risk of going through a nondescript assessment and listing process. This becomes a significant burden if the importer imports hundreds or thousands of species for which there is sketchy biological or scientific data, yet the species has been in trade in extremely large numbers for many, many years absent adverse impacts.

Unlike other areas of the economy where fees are assessed to seek government approval of a patented or proprietary drug or chemical product, importers of nonnative species would be funding an assessment not only for themselves but for all of their competitors, and even other industries that trade in the same species for other purposes. How will the USFWS determine which importer is selected to bare the costs? Risk assessments and risk analyses are expensive undertakings. Will the fees be $10,000, $25,000, $50,000 or $100,000 or more per assessment per organism? How will the figures be determined and consistently applied?

Definitions (Section 11)

Failure to provide a clear definition of "wildlife" further adds confusion to HR 6311. As crafted, "nonnative wildlife species" includes "any species that is not a native species."

The definition goes on to specifically cover the entire animal kingdom including insects, mollusks, crustaceans, arthropods, coelenterates, and all other invertebrates.

By this definition, many species of animals that are longstanding staples of the pet industry, food aquaculture, sports fishing, and livestock would have to go through the process to ascertain if they pose the "likelihood" of harming the environment or other factors set forth in HR 6311. These would include cattle, cats, dogs and numerous animals considered "domesticated." A clear definition of "wildlife" is essential.

Conclusion

On behalf of the Pet Industry Joint Advisory Council (PIJAC), thank you for providing us an opportunity to share our thoughts and concerns regarding HR 6311. Despite our reservations about HR 6311, we remain committed to working with your Subcommittee to address this important environmental issue.

We believe that we have raised a number of valid issues regarding HR 6311 and its potential for shutting down several industries dependent on nonnative species. Additionally, it could end up encouraging rather than preventing the release of nonnative animals.

We respectfully suggest that the bill as currently crafted sets the USFWS up for failure. Its whole approach is one that defies practical implementation, and demands exorbitant resources. In short, it would not visit upon the public the beneficial results to which it aspires. The measure demands the nearly impossible task of conducting thousands of scientifically valid risk assessments in a short time-frame, and presumes that all species subject to these assessments shall be prohibited pending a contrary finding, even though no evidence of adverse impact exists. Unlike a risk analysis, it does not explicitly account for socio-economic and cultural considerations. The bill assigns such an impossible task to an agency woefully bereft of resources for the job, and holds hostage several vital sectors of a challenged economy.

We believe that there is a better way to achieve a superior result. To that end, we recommend that a working group comprised of various stakeholders be convened to offer recommendations on the most effective method for moving the screening process forward, as called for in the National Invasive Species Plan. A number of key industries need to be at the table. This is not simply a pet industry issue. A number of pathways have proven to be far more significant vectors of nonnative species than pets.

We look forward to working with your Subcommittee in crafting more realistic legislation that will serve the public and affected industry alike in concert with the National Invasive Species Management Plan and the Executive Orders calling for such a plan.