PetAlert

THE PET INDUSTRY'S UNIFIED VOICE

HR669 - April 2, 2009

Revised

CONGRESSIONAL HEARING BANNING NONNATIVE SPECIES

APRIL 23

ACTION NEEDED

THE ISSUE

The Nonnative Wildlife Invasion Prevention Act (H.R. 669), introduced by Del. Madeleine Bordallo (D-Guam) Chair of the Subcommittee on Insular Affairs, Oceans and Wildlife of the House Natural Resources Committee would totally revamp how nonnative species are regulated under the Lacey Act.

Currently, the Fish and Wildlife Service (hereafter Service) is required to demonstrate that a species is injurious [harmful] to health and welfare of humans, the interests of agriculture, horticulture or forestry, and the welfare and survival of wildlife resources of the U.S.

HR 669 substantially complicates that process by compelling the Service to produce two lists after conducting a risk assessment for each nonnative wildlife species to determine if it is likely to "cause economic or environmental harm or harm to other animal species' health or human health." In order to be placed on the "Approved List" it must be established that the species has not, or is not likely, to cause "harm" anywhere in the US. Species that are considered potentially harmful would be placed on an "Unapproved List." Furthermore, HR 669 would essentially ban all species that do not appear on the Approved List, regardless of whether or not they have ever been petitioned for listing or are sufficiently well studied to enable a listing determination.

Species not appearing on the "Approved List" could not be imported into the United States, nor could they be moved in interstate commerce. Trade in all such unlisted species **would come to a halt** – possession would be limited and all breeding would have to cease. To reiterate: Unless species are included on the Approved List import, export, transport, and breeding would be prohibited. Exceptions are limited and would not be available to pet owners across the nation.

THE IMPACT

Nonnative species in the pet trade encompass virtually every bird, reptile, amphibian, fish and a number of mammals (e.g., hamsters, gerbils, guinea pigs, ferrets) **commonly kept as pets**. It is immaterial under HR 669 that the

- Vast majority of these nonnative species in the pet trade have been in the United States in large numbers for decades, some for hundreds of years, and have not proven to be an environmental problem.
- Numerous species are raised in the United States for many purposes: pets, recreational fishing and hunting, food, etc.
- Only a small number of species kept as pets have caused environmental problems, and this has generally been on a very localized basis (i.e. southern Florida, Hawaii).
- Most states have exercised their authority to regulate problem species within their own borders through a mixture of management regimes ranging from permit systems to bans.

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- The HR 669 listing criteria mandates proving a negative – that no harm has or is likely to occur within whole of the United States.
- The "risk assessment" process is too limited in scope and application and should instead be a broader "risk analysis" that also takes into consideration socio-economic factors and mitigation (management) measures that might be utilized by the federal and state agencies.

HR 669 would employ a 2-step process of a Preliminary and a Final Approved List and necessitate that the Service promulgate regulations not only to deal with creation of the lists but also regulating all aspects of this rather complex bill. The Service would have to complete major portions of the listing and regulation process within 24 months of passage. It is not clear how the Service will be able to conduct the required risk assessment outlined in HR 669 within these timeframes given the fact that it takes on average 4 years for the Service to find a species harmful under the current Lacey Act. The bill sets up the under-resourced Service for failure and numerous lawsuits by activist groups.

Listing Process - To list or not to list? -- That is the question!

The listing process is somewhat complex. To place a species on the Preliminary Approved List (which at some point in time converts to a Final Approved List) the Service must make a determination that those listed species, based on scientific and commercial information, are

- Not likely to be harmful to the United State's economy, environment or other animals' or human health OR
- May be harmful "but already are so widespread in the United States that it is clear to the Secretary that any import prohibitions or restrictions would have no practical utility for the United States."

While proponents would argue that this test would not be as rigorous as the ultimate test set forth in HR 669, PIJAC is at a loss how one proves "no potential harm" under the alleged simplified test for inclusion on the "Preliminary Approved List."

To get on the ultimate "Approved List " (accomplished within 37 months), the Service would have to complete risk assessments, not risk analyze, using the following criteria (and possibly others to be determined later in process development). The assessors would have to make a determination based on:

- Species identified to species level, and if possible information to subspecies level;
- Native range of the species (which may or not be fully known);
- Whether species has established, spread, or caused harm to the economy, the environment, or other animal species or human health in ecosystems in or ecosystems similar to those in the US;
- Environmental conditions exist in the US that suitable for establishment of the species;
- Likelihood of establishment in the US;
- Likelihood of speared in the US;
- Likelihood species would harm wildlife resources of the US;
- Likelihood the species would harm native species that are "rare" (not defined) or listed under Endangered Species Act;
- Likelihood species would harm habitats or ecosystems of the US;
- Likelihood "pathogenic species or parasitic species may accompany the species proposed for importation;" and
- Other factors "important to assessing the risk associated with the species".

Once a determination is made, the Service will place a species on one of 3 lists:

- Approved List
- Unapproved List
- The "Non-list" (section 4(2)(C)) for species for which "the Secretary has insufficient scientific and commercial information to make a determination " whether to approve or disapprove.

User Fees
HR 669 also calls for the establishment of a user fee system for funding assessments following the adoption of the "Preliminary Approved List." This has been a long term desire of animal activist and environmental protectionist organizations since they know that user fees can become cost prohibitive and virtually eliminate small interest groups or business from participating in the process. It can easily paralyze access, except for the wealthy or those living off of tax exempt dollars who use the system to drive their agendas. Furthermore, fees are not made available to the Service until 36 months into the process. It is not clear how the Service would implement the first three years of work under HR 669.

RECOMMENDATIONS – TIME IS NOW!

According to the Defenders of Wildlife "For far too long the pet, aquarium and other industries have imported live animals to the United States without regard to their harm…" Defenders, the Humane Society of the United States (HSUS) and The Nature Conservancy (TNC) are part of a coalition pushing hard for passage of this bill without amendments.

A HEARING has been scheduled for April 23 and the pet industry needs to be heard loud and clear prior to the hearing! The anti-trade elements are hard at work to stop activities involving non-native species.

A copy of HR 669 can be found on PIJAC's website in the "Breaking News" and the "HR669 Forum" sections of the www.pijac.org. Read the bill carefully since it could shut down major segments of the pet industry virtually overnight. For a review of how a bill becomes a law, visit: www.youtube.com/watch?v=mEJL2Uuv-oQ

PIJAC POSITION -- PIJAC supports the underlying intent of HR 669 to establish a risk-based process in order to prevent the introduction of potentially invasive species. It has been clear for quite some time that steps are needed to enhance and improve the current listing process for species shown to be injurious under the Lacey Act. In addition to much needed appropriations to fund staff and other ancillary support aids, the Lacey Act needs to be modernized to make the process more timely, efficient and transparent. However, HR 669 falls far short of accomplishing this objective.

CONTACT MEMBERS OF THE SUBCOMITTEE (see contact information below) by

- emailing or faxing your opposition to HR 669 to their offices in Washington DC urging them to amend the bill
- **ALSO** contact their district offices
    - voice your opposition
    - and request a meeting with the representative when they are back in the District

It is also important to organize like-minded people in your district so several of you can visit with your representative at the same time.

A few talking points:

- The approach taken in HR 669 will adversely impact trade and other activities involving nonnative species without utilizing a scientifically valid approach – even in the limited instances in which sufficient data are available on the biology and range of species, it will be virtually impossible to prove that they could not establish and spread in some portion of the US. Thus, it will be nearly impossible to get species on the "Approved List" unless they are so widespread in the country already.
- The degree of uncertainty that will result by applying the "as if" criteria will result in virtually every species ending up on the list for which there is insufficient information to make a decision DESPITE THE FACT that most of these species have been in trade, recreational use, farming, etc. for decades with only a small percentage of species being problematic, and then in localized situations.
- A one size fits all species assessment process is not plausible – what may be harmful in Hawaiian waters would not be harmful in Kansas or the deserts of Arizona or Texas.
- HR 669 overly simplifies the complexity of the issue; bans all species unless they can get on an Approved List; the criteria for the Approved List are not realistic; the lists are biased towards those entities that can

afford to engage in the process – undoubtedly the Service will be paralyzed by activist animal rights and protectionist environmental organizations petitioning for species to be unapproved.

- The Service does not have the capacity to implement the provisions given limited staff, money, and unrealistic timeliness.
- The unintended consequences of a sloppy bill could actually be to facilitate the mass release of animals, and/or their mass euthanasia.
- HR 669 does not take into consideration the socio-economic complexity of the issue. Stakeholders dependent upon access to non-native species include diverse interests: pet industry, sports fishing, federal/state hatcheries, agriculture, biomedical research, entertainment, hunting, food aquaculture. Currently, thousands of non-natives species are both imported and exported, as well as captive raised (in some instances farmed on ranched) within the United States. While most of these species are never intended for release into natural environments, some of these species (e.g. oysters, trout, bass, deer, game birds) are managed by government and private entities throughout the US.
- HR 669 calls for a risk assessment when, in fact, a risk analysis process is warranted. A risk assessment only considers biological indices related to potential invasiveness, while a risk analysis considers both these, as well as socio-economic factors, including potential management options. A risk analysis can enable strategic decisions to be made, such as enabling certain species to continue in trade/transport if the risks of invasion could be sufficiently management (e.g. HR 669 treats the entire United States as if it is a single ecosystem and ignores the commonly accepted definition of invasive species that applies to a specific ecosystem, not the political boundaries of country.
- Setting criteria in statute removes flexibility that could be achieved through rulemaking since a "one-size-fits-all" process is not appropriate for all taxonomic groups, regions of the country, proposed usage of the species, etc.
- Deadlines are unrealistic. While we recognize the rationale for placing timeframes on the Service, deadlines cause lawsuits; deadlines mandate action for unfunded mandates; two years is unrealistic to conduct an assessment (even a rough screen) of literally thousands of species (1) imported, (2) raised in US for local markets as well as exports, and (3) imported as well as raised in US.
- The inclusion of animals owned prior to prohibition of importation (Section 2(f)) is major departure from current prohibitions under Lacey Act. HR 669 would allow possession of "an animal" if the owner could prove that it was legally owned pre-launch of assessment. There is no indication as to what it takes to prove legality. Nor is it clear that one would know when an assessment of a particular species had been launched.
- Assuming that more than a handful of nonnative species end up on an Approved List, enforcement of a list of approved species that have been in trade for decades will be more difficult than enforcing a smaller Unapproved List. It is well established that only a small percentage of the species in trade have been shown to be "invasive." The ornamental aquarium industry, for example, deals with more than 2,500 species of freshwater and marine fish. A handful of species have been found to be a problem in southern Florida, but not elsewhere in the US; some found to be a problem in Hawaii are not a problem in Kansas.
- Promulgation of regulations implementing the HR 669 process will be complex and it is doubtful that it can be achieved within prescribed timeframe, especially if the Service is to simultaneously conduct thousands of assessments on species already in trade.

ACT NOW – Also alert your employees, friends, neighbors, competitors, and any other like-minded people and urge them to take time to respond to this unworkable approach to dealing with invasive species, which is an issue of concern to all of us.

KEEP CHECKING PIJAC'S WEBSITE FOR UPDATES ON HR 669

If you have questions or wish to express your views to PIJAC, please contact Marshall Meyers or Bambi Nicole Osborne by phone at 202-452-1525 or via email at bambi@pijac.org or marshall@pijac.org.

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[PLEASE NOTE: *In order to contact Representatives via the internet, click on the links below. Because most Representatives do not have personal email addresses, these links will take you to a "Contact Form" on their personal House of Representatives web pages. Fill out the Contact Form and submit.***]**

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