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Advocacy: the voice of small business in government

May 10, 2010

Via Electronic Submission

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C. Street, N.W.
Room 3156
Washington, DC 20240

Re: Proposed Rule; Injurious Wildlife Species; Listing the Boa Constrictor, Four Python Species, and Four Anaconda Species as Injurious Reptiles.[1]

Dear Secretary Salazar:

The Office of Advocacy at the U.S. Small Business Administration (Advocacy) respectfully submits these comments to the Department of the Interior, U.S. Fish and Wildlife Service (FWS) regarding its proposal to list nine species of constrictor snakes as injurious reptiles under the Lacey Act.

Advocacy has spoken and met with members of the small business communities that will be affected by the proposed rule and is pleased to submit these comments on their behalf. Advocacy is concerned that the proposed rule will have a significant economic impact on a substantial number of small businesses involved in the breeding, sale, and care of the reptiles under consideration. Advocacy urges FWS to consider significant alternatives to this rulemaking that would meet the agency's objectives without jeopardizing small businesses.

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory

[1] Proposed Rule; Injurious Wildlife Species; Listing the Boa Constrictor, Four Python Species, and Four Anaconda Species as Injurious Reptiles; 48 *Fed. Reg.* 75 (March 12, 2010), RIN: 1018-AV68.

Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[2] gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.[3]

Background

On March 12, 2010 FWS published a proposed rule that would list nine species of constrictor snakes as injurious species under the Lacey Act. Among the nine species proposed for listing are four species of pythons, four species of anacondas, and the boa constrictor.[4] If the rule is finalized, importation and interstate transport of these nine species will be prohibited, unless authorized by permit for scientific, medical, educational, or zoological purposes.[5]

On April 21, 2010 Advocacy hosted a small business roundtable attended by members of the small business communities potentially affected by the proposed rule. Participants included constrictor snake breeders, reptile supply manufacturers, specialized reptile shipping companies, zoological organizations, academics, and trade associations. All participants expressed concerns that the proposed rule, if finalized, will have devastating consequences on their businesses. Additionally, FWS has already received thousands of public comments on this rule, many from small businesses and individuals that will experience economic hardships if this rule is finalized.

Pursuant to the RFA, FWS published an Initial Regulatory Flexibility Act Analysis (IRFA) with its proposed rule. Advocacy has concerns that the IRFA does not adequately capture the economic impacts of the proposed rule on small businesses. Advocacy also believes that the IRFA does not adequately discuss significant alternatives to the proposed rule, as required by the RFA. The following comments provide FWS with information regarding the potential economic impacts of the proposed rule on small businesses, as well as a discussion of significant alternatives to the proposed rule.

The IRFA does not adequately describe the impacts of the proposed rule on small entities and does not discuss significant alternatives to the proposed rule

Advocacy believes that the IRFA published with this proposed rule does not provide an accurate analysis of the economic impacts of the proposed rule on small entities. A meaningful IRFA gives the public adequate facts to understand the impact of a proposed rule on small entities. In its IRFA, FWS states that "the snake market is below the commerce data radar with no time for a survey of the industry to determine the financial

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[2] *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.) (*SBREFA*).
[3] *Id.*
[4] *Supra* note 1.
[5] *Id.*

effects of the declaration of injurious."[6] Advocacy is unaware of any judicial or legislative mandates that would require FWS to move forward with this rulemaking without conducting a thorough analysis of the economic impacts of the rule on small entities as required by the RFA. At this point in time, Advocacy believes that the public has not been given this information and requests that FWS publish a supplemental IRFA expanding the scope of its analysis to address the points below.

The IRFA has not properly identified the small entities directly affected by the rule

The IRFA only identifies two types of small entities that could experience significant economic impacts if the listing in finalized: (1) companies importing live snakes, and (2) companies with interstate sales of live snakes. At its April 21st small business roundtable, Advocacy learned that there is an entire supply chain of support businesses that will be directly impacted by the proposed rule if it is finalized. FWS should amend its IRFA to further examine the economic impact of the proposed rule on the small entities identified below.

The proposed rule will have impacts not only on breeders and merchants of live snakes, but also on specialized reptile shipping companies, reptile supply manufacturers, and businesses that provide feed stock for snakes. Several representatives from these types of small businesses attended Advocacy's April 21st roundtable. One particular company, Zoo Med Labs, manufactures reptile care supplies and estimated that the proposed rule will result in a 30 to 40 percent drop in sales and a 20 to 30 percent reduction in staff. They indicated that 111 of their products would be affected by the rule, causing an estimated loss in sales of $5.157 million. This is just one example of a business not yet identified in the IRFA that will be directly and significantly impacted by the rule.

Advocacy has also learned that there are hundreds of trade shows throughout the U.S. every year that primarily feature pythons and boa constrictors and products for keeping and caring for these animals. Restricting interstate transport of snakes to these events will not only have significant impacts on the organizations promoting these shows, but also the individuals who rely upon these shows to network and market their snakes and products.

The proposed rule will also directly impact herpetological veterinarians, zoological organizations, and educational programs. One roundtable participant brought it to Advocacy's attention that there are only a handful of qualified herpetological veterinarians in the country; not only would these veterinarians be adversely affected, but the proposed rule will also severely impede snake owners' and breeders' ability to care properly for their snakes. Although interstate transport of listed snakes would be allowed by permit for scientific, medical, educational, or zoological purposes, roundtable participants expressed concerns that obtaining these permits in most cases will not be feasible due to time constraints and limited agency resources.

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[6] Initial Regulatory Flexibility Analysis for Listing Nine Constrictor Snake Species as Injurious under the Lacey Act (February 1, 2010), page 3; available at www.regulations.gov RIN: 1018-AV68.

The IRFA underestimates the economic impact on small entities

The IRFA does not analyze with any specificity the magnitude of the economic impacts this rule will have on small entities that engage in the interstate sale of live snakes. The IRFA assumes a sales reduction of between 20 and 80 percent for businesses that sell live snakes, but does not provide factual support for that assumption or any further analysis. FWS should amend its IRFA to provide greater factual detail and context for its analysis of the economic impacts on small entities that breed and sell the snakes in question.

Advocacy has spoken with several individual breeders who have asserted that this rule, if finalized, will essentially shut down their businesses and severely jeopardize their families' livelihoods. The individuals Advocacy has spoken with primarily breed and sell exotic varieties of pythons and boa constrictors. They believe that restricting interstate transport of these snakes will greatly reduce the value of their current stock and make continued investment in them unsustainable. Advocacy has only spoken with a handful of these business owners, but has been informed that there are thousands of individuals in similar situations as a result of this proposed rulemaking.

The owner of one particular company, Prehistoric Pets, attended Advocacy's roundtable and shared detailed information regarding its business profile. The owner has been engaged in breeding and selling exotic python morphs for twenty-five years. His southern California company grossed just under $7 million dollars from 2005-2009 and he projects a gross revenue of $12 million dollars over the next five years. If the proposed rule is finalized, he estimates that he will lose 85 percent of his sales and he will no longer be able to continue with his business. He also believes that the proposal itself has already affected the value of his snakes by discouraging U.S. breeders from considering investing in species that may not have a future in the pet trade. His company has also conducted thousands of educational presentations with pythons throughout the country that would no longer be possible if the proposed rule is finalized. Again, this is just one example of a small business that will experience significant impacts as a result of this rule.

From the conversations Advocacy has had with individual business owners, it appears that that businesses engaged in the breeding and sale of pythons and boa constrictors are highly specialized and run by individuals with years, and in some cases decades, of experience with these often valuable animals. In general, substituting other animals for pythons and boa constrictors is not a feasible solution for these businesses. It appears that the lifelong investments these business owners have made in breeding and selling these snakes will essentially be rendered valueless if this rule is finalized. FWS should continue to conduct outreach with the small businesses engaged in the domestic snake breeding and sale market in order to develop an IRFA that fully addresses the impact of the rule on their businesses before proceeding with this rulemaking.

The IRFA does not discuss significant alternatives

When a proposed rule is expected to have a significant economic impact on small entities, as in the instant case, the RFA requires that the agency promulgating the rule examine significant alternatives to the proposed rule.[7] Under the RFA, significant alternatives must reduce the burden of the proposed rule on small entities while achieving agency goals.[8] FWS has not examined significant alternatives to this rulemaking and has not provided the public with an opportunity to comment on such alternatives. None of the alternatives presented in the agency's NEPA analysis are significant alternatives under the RFA because they do not significantly reduce the impact of the proposed rule on small entities.

Several significant alternatives to the proposed listing have been suggested in public comments to FWS and at Advocacy's April 21st roundtable. All individuals who have expressed concern about this rule to Advocacy agree that preventing the establishment of invasive species of snakes in our nation's ecologically sensitive areas is important and worthwhile. However, many individuals believe that using the Lacey Act is inappropriate in this case due to the regional nature of the problem and the questionable effectiveness a ban on interstate transport will have with regard to eradicating existing invasions. Additionally, there is concern that the Lacey Act has never been used to restrict the trade of animals so widely held in captivity as pets, and that this rule would set a precedent for the regulation of other pets.

Many individuals have suggested that FWS consider committing more resources toward eradicating existing feral snake populations and partnering with the private sector to educate the public about the risks these snakes pose to wildlife and humans combined with best management practices for avoiding accidental escape. At Advocacy's roundtable, participants expressed a willingness to assist FWS with these efforts. Another roundtable participant, Dr. Frank J. Mazotti from the University of Florida, suggested that performing risk assessments and screening of imported and locally bred alien wildlife to identify potentially invasive species would be a better alternative than using the Lacey Act because it focuses attention on specific species in locations where they may cause problems.

Advocacy recommends that FWS further investigate the suggestions above as well as other ways that it can partner with the private sector and other federal, state and local authorities to eradicate existing feral snake populations and prevent future feral snake populations from becoming established before proceeding with this rulemaking.

Conclusion

Advocacy appreciates this opportunity to forward the concerns of small businesses to the Fish and Wildlife Service. Advocacy believes that the proposed rule will have a significant economic impact on a substantial number of small entities that has not been

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[7] 5 U.S.C. at § 603(c).
[8] *Id.*

fully examined by FWS. Advocacy recommends that FWS develop a supplemental IRFA that would more accurately describe the economic impacts on small businesses engaged in businesses related to the breeding, sale, use and care of the snakes at issue. Advocacy also recommends that the supplemental IRFA discuss consider significant alternatives to this rulemaking that would accomplish the agency's goals without harming small businesses to such a degree. Please do not hesitate to contact me or Jamie Belcore Saloom at (202) 205-6890 or Jamie.Belcore@sba.gov should you have any questions.

Sincerely,

/s/

Susan M. Walthall
Acting Chief Counsel for Advocacy

/s/
Jamie Belcore Saloom
Assistant Chief Counsel for Advocacy

cc: The Honorable Cass Sunstein, Administrator, Office of Information and Regulatory Affairs
Craig Martin, Branch Chief, Invasive Species Program, U.S. Fish and Wildlife Service