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MEMORANDUM

H.R. 669 is a misguided piece of legislation

From Brent W. Gattis, Senior Policy Advisor

Delegate Madeleine Z. Bordallo (D-GU), Chairwoman of the House Natural Resources Committee's Subcommittee on Insular Affairs, Oceans and Wildlife recently introduced legislation to alter the process for regulating nonnative species under the Lacey Act—H.R. 669, the Nonnative Wildlife Invasion Prevention Act. While Delegate Bordallo has stated that it is not the intent, as it is currently written H.R. 669 will ban the importation, transportation, and breeding of all nonnative species, including the common household pet.

H.R. 669 is a misguided piece of legislation with an overly expansive reach that could have an adverse effect on numerous animal-related industries. The legislation would require the U.S. Fish and Wildlife Service to maintain an “approved” list in addition to the current “unapproved” list of nonnative species. Species not on the “approved” list will be banned, regardless of whether or not they have

ever been petitioned for listing or are sufficiently well studied to enable a listing determination. The legislation does not take into account regional differences or transition issues that will arise upon passage.

The House Insular Affairs Subcommittee held a hearing April 23 on H.R. 669. Below is a brief overview of the witness list and testimony, opening statements and overall themes of the hearing.

Witness List

- Gary Frazer, Assistant Director for Fisheries and Habitat Conservation, U.S. Fish and Wildlife Service, Department of the Interior;
- David Lodge, Ph.D., Director, Center for Aquatic Conservation and Professor, Department of Biological Sciences, University of Notre Dame;
- Simon C. Nemtzov, Ph.D., Wildlife Ecologist and Scientific Authority for the CITES Convention Israel Nature and Parks Authority;

- Lawrence M. Riley, Division Coordinator, Wildlife Management Division, Arizona Game and Fish Department;
- William R. “Bill” Martin, President, Blue Ridge Aquaculture, Inc.; and
- Marshall Meyers, CEO and General Counsel, Pet Industry Joint Advisory Council

Opening Statements

In her opening statement, Chairwoman Bordallo highlighted a few provisions in H.R. 669 that are intended to protect the United States from nonnative invasive species. She stated that the legislation, which includes a science-based risk assessment process for developing “approved” and “unapproved” lists for importation, is not intended to affect the ownership or importation of the common household pets. Chairwoman Bordallo also expressed concern that the current process, including the four-year average wait for listing a species as “injurious.”

Ranking Member Brown stated that he received thousands of telephone calls and emails from constituents concerned about the legislation. He said that the Lacey Act is clearly not working, but he expressed concerns that H.R. 669 could negatively impact small businesses. He stressed the need to improve the current system and raised the issue of an “unapproved” list vs. an “approved” list.

Representative Wittman also provided an opening statement for the Minority, as Ranking Member Brown was unable to provide his at the start of the hearing.

Representative Wittman stated that nearly every member of the Subcommittee received telephone calls or emails from concerned constituents regarding H.R. 669. He questioned whether the Lacey Act would be able to accomplish all the requirements in the legislation and whether the U.S. Fish and Wildlife Service (FWS) will have adequate resources to perform their required functions.

Testimony

In his testimony, Mr. Frazer said he understands the intent of the legislation, but that he had concerns with its current form. He stressed the need to be proactive, and he expressed his support for developing a risk assessment process. Mr. Frazer’s concerns with the legislation include: ensuring FWS has adequate processes in place to handle requirements in the legislation; ensuring FWS has adequate enforcement authorities; and ensuring FWS has adequate funding.

Dr. Lodge highlighted the danger invasive species can be to the United

States and said that the legislation is a step in the right direction. He stated that a risk assessment process is key to protecting from invasive species. Dr. Lodge also suggested amending or replacing the injurious wildlife provision of the Lacey Act to clarify authority for and require pre-import screening.

Dr. Nemtzov’s testimony centered on an explanation of Israel’s process for approving nonnative species for import, which is based on Australia’s system. He said that an important aspect of Israel’s program is the application fee paid by the importer, which helps ensure adequate funding for the program. Dr. Nemtzov stated that the program is not based on a scoring system, but on a consensus agreement from a committee of biologists who use information regarding climate matching and the species’ history of invasions. He also mentioned that Israel works cooperatively with the industry to run the program.

Mr. Riley expressed concerns that the legislation extends federal authorities for wildlife too far. He stressed that “possession” and other activities within a state’s boundaries should remain in state control. He said that issues surrounding invasive species are often local and that the federal government should consult with the state on regulating these species. Mr. Riley stated that a risk assessment program would benefit from a regional consideration. He also expressed concerns regarding the transition to an “approved” list and adequate funding.

In his testimony, Mr. Martin said he understands the necessity of H.R. 669 but that the bill needs fine-tuning. He recognized that regulations on

industry help to solve problems within that industry, but he stressed that the legislation should be targeted at these specific issues, rather than painting with a broad brush.

Mr. Meyers stated that virtually every species, other than cats and dogs, sold in U.S. pet stores will be affected by H.R. 669. He stressed that emphasis should be put on discovering why the current system is broken. He expressed concern that the legislation does not adequately take socio-economic issues and risk management into account; requires funding not readily available; does not provide adequate time to transition; and undermines state authority to regulate species on a regional level.

Mr. Marshall stressed that a “one size fits all” approach will not work and that the grandfather clause for those species already in existence in the United State will be ineffective. He urged for a more realistic bill that takes these and other issues into consideration.

Overall Themes

The current system is broken—It was widely agreed that the current process for listing species as “injurious” is not working, but it was also said that this piece of legislation will not repair the broken system. Comprehensive discussions on why the system is broken and how to repair it have not taken place. Instead, this broad and overarching piece of legislation has been offered as a hasty solution.

Unapproved list vs. approved list

Much discussion took place on the need for having an “approved” list as well as an “unapproved” list.

It was suggested by some that having an “approved” list will provide added security, but others suggested that it would be redundant and a drain on resources.

Currently, FWS does not have the manpower or resources to manage such a list, and it remains unknown if this legislation would provide the agency with the appropriate authorities and resources.

Breadth of legislation

There was some agreement that the legislation is too broad and overarching. Currently, FWS engages in a state and federal cooperative approach. It was suggested that having an improved cooperative approach with regional flexibility would ensure that various species in various parts of the country are regulated appropriately for their situation.

Question and Answer Period

The following issues were discussed during the question and answer period:

- Inadequate resources, financial and otherwise, for FWS in the legislation;
- Limited resources can be resolved by charging importers an application fee for the risk assessment;
- FWS estimates that only 10 percent of species will potentially be affected by the legislation;
- Transition period between passage of the legislation and application approval is unclear;
- FWS interprets the legislation to allow the current state of commerce until approval for import is obtained;
- Do importers currently importing

have to cease until application approval is obtained;

- Necessity for flexibility for indoor aquaculture facilities;
- Pet industry’s sincere interest in being involved in the process;
- Possibility of different permits for different species;
- Necessity of having state involvement and authority;
- Need for a more flexible permit system;
- Invasiveness of species can be regional,
- National federal system could be ineffective in those cases;
- Process for addressing “grandfathered” wildlife owners who will be prohibited from transporting their animals; and
- Possibility of including a pet-surrender program in the legislation.

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