



## USARK Response to U.S. Fish and Wildlife Service's Initial Regulatory Flexibility Analysis

### Introduction

The United States Fish and Wildlife Service ("Service") does not possess the information needed to do a credible regulatory flexibility analysis on proposed rules regarding constrictor snakes. In its report, *Initial Regulatory Flexibility Analysis for Listing Nine Constrictor Snake Species as Injurious Under the Lacey Act*, dated February 10, 2010, (hereafter "IRFA") the Service relied on baseless assumptions and extrapolations and it ignored information submitted by industry participants and trade associations in response to its 2008 Notice of Inquiry. In addition, the Service misused the information it was provided by respondents to the notice. Therefore, the Service's regulatory flexibility analysis is not a complete, reliable, or convincing analysis of the impact of the proposed rule on small businesses involved in the buying and selling of the nine snake species included in the proposed rule. The IFRA grossly underestimates the scope of the impact of the proposed regulations.

### The Fish and Wildlife Service Lacks Information

The Service lacks basic information about constrictor snake imports and domestic retail markets. With regard to the constrictor snake species included in the proposed rule, the Service admits that it lacks information on the sellers, purchasers, channels of distribution, and size of

import, wholesale and retail markets. In its draft economic report, the Service stated that “we do not know where these breeders or wholesalers are located nor do we know where the snakes are shipped after purchase. Furthermore, we do not know the business profiles of these entities.” (Draft Economic Report, p 12.) In the IRFA, the Service contends that “...data pertaining to interstate shipments and business profiles to determine the percent of revenues impacted by the proposed rule are currently unavailable.” (IRFA, p. 3.)

The Service had not attempted to find this information at the time that the IRFA was written. It states that: “The snake market is below the commerce data radar with *no time for a survey of the industry* to determine the financial effects of the declaration of injurious.” (Emphasis added, IRFA, p. 3.) Indeed, the United States Geological Survey states in its 2009 report, *Giant Constrictors: Biological and Management Profiles and an Establishment Risk Assessment for Nine Large Species of Pythons, Anacondas, and the Boa Constrictor*, that there are no data available pertaining to snake ownership, or the constrictor snake businesses. Yet, the Service provides no justification for the statement that “there was no time available for it to undertake a survey of the industry.”

In sum, the Service neglected to obtain information on the industry from the relevant businesses and trade associations. Instead the IFRA, while replete with concessions that the Service does not have facts and data, is based solely on the Service’s assumptions and extrapolations.

#### Data Unknown: Baseless Assumptions and Extrapolations

Where the Service has inadequate information, it makes baseless assumptions to estimate the information it lacks. For example, in the IFRA the Service states that:

- . . . data pertaining to interstate shipments and business profiles to determine the percent of revenues impacted by the proposed rule *are currently unavailable*. *Due to the limited data*, business profiles are extrapolated by NAICS (North American Industry Classification System) code and *assumptions are made* pertaining to interstate shipments. (Emphasis added, IRFA p.3.)
- The U.S. Small Business Administration defines a “small business” as one with annual revenue that meets or is below the established size standard, which is \$750,000 for “All Other Animal Production” businesses (NAICS 112990) and \$6.0 million for “Pet and Pet Supplies Stores” businesses (NAICS 453910). *The U.S. Census Bureau does not publish detailed data for NAICS 112990*. The most recent data for NAICS 11 shows that about 85 percent of establishments qualify as small businesses (less than 10 employees). The most recent data for “Pet and Pet Supplies Stores” (NAICS 453910) shows that about 62 percent of establishments qualify as small businesses (less than 10 employees). (Emphasis added, IRFA p.3.)
- *However, this rulemaking would have an unknown dollar impact on these small businesses because it is not known* (1) whether these businesses sell other snakes and reptiles as well, (2) if the listed snakes are more profitable than non-listed snakes or other aspects of the business, (3) if consumers would substitute the purchase of other snakes that are not listed, and (4) what proportion of constrictor snake sales small businesses account for. (Emphasis added, IRFA p.4.)
- While PIJAC [Pet Industry Joint Advisory Council] provided data on the number of U.S. bred snakes and their retail value in 2008, *we were unable to find any other data sources* for U.S. bred snakes. Thus, *we do not know* the number of breeders or wholesalers, where these breeders or wholesalers are located, *nor do we know* where the snakes are shipped after purchase. Furthermore, *we do not know* the business profiles of these entities. *That is, it is unknown* if these businesses are diversified by earning income in other areas in addition to the breeding and/or selling of large constrictor snakes that would be listed under the proposed rule. (Emphasis added, IRFA p.4.)
- *It is unknown* whether these companies predominately breed snakes or whether they predominately sell the snakes through pet stores. Thus, these businesses could be categorized as “Other Animal Production” (NAICS 112990) or as “Pet and Pet Supplies Stores” (NAICS 453910). *Assuming the size distribution for these industries can be extrapolated* to the large constrictor snake market, then approximately 62 to 85 percent of entities breeding or selling large constrictor snakes would qualify as small businesses. (Emphasis added, RFA p.4.)
- . . . *Since information is not currently available* on interstate sales of large constrictor snakes, *it is assumed* that a sales reduction of between 20 and 80 percent would most likely include the actual impact on out-of-state sales. (Emphasis added, IRFA p.4.)

- Impacts also are dependent upon whether or not consumers would substitute the purchase of an animal that is not listed, which would thereby reduce economic impacts. There are no marketing data that estimate how consumer preference may change due to the listing thus changing the types of snakes that businesses sell. This analysis does not account for this type of substitution effect. . . . (Emphasis added, IRFA p.5.)

A primary issue (if not the whole purpose) of a regulatory flexibility analysis is the identification of the small businesses that are impacted by the proposed regulation. Yet, the IFRA fails to identify the businesses that are affected by the proposed regulations. Instead, the IFRA relies on some data from the Service's Law Enforcement and extrapolates from U.S. Census Bureau employment data to conclude that:

Over the last 10 years, 481 companies or individuals imported all species of live constrictor snakes (USFWS Law Enforcement). *It is unknown* whether these companies predominately breed snakes or whether they predominately sell the snakes through pet stores. *Assuming the size distribution can be extrapolated* from the U.S. Census Bureau employment data, then approximately 298 to 409 companies (62 to 85 percent) would qualify as small businesses. (Emphasis Added, IRFA pp.3-4.)

It is unclear what specific source the Service relied on to determine that "The maximum impact of the rule would result in only 66% of all businesses that imported snakes imported the nine prohibited snakes. (IFRA, p.4) Instead, it provides in the IFRA only that "Of these, 197 to 270 companies or individuals (66 percent) imported live constrictor snakes that are included in the proposed rule." (IRFA, p. 4.) There is no substantiation for these calculations. Further, what can be substantiated is that Census data are aggregated to such a high level that they are unreliable estimators of the number of small businesses selling constrictor snakes.

#### The Service Ignored Information Provided

The Service omits from its analysis a large number of businesses that will be impacted by the proposed regulation. The Pet Industry Joint Advisory Council ("PIJAC") provided detailed

data to the Service on estimates of the number of retailers. Yet the Service omits these data. PIJAC's submission indicates that the number of businesses that sell constrictor snakes includes "10 importers, 50 distributors, 5,100 retailers, 25 hobbyist show promoters hosting between 350-400 reptile shows in the US annually, and 2,000-5,000 individual hobbyists." (PIJAC submission p. 3.) In addition, PIJAC estimates there are 2,500 to 5,000 businesses and individuals that breed constrictor snakes. (Id.) PIJAC also states that "Individual hobbyists often specialize in a small number of species/subspecies and may gross sales in the \$10,000s for specific color morphs or locality-based varieties" (PIJAC Submission, p. 28.) If these hobbyists receive revenues in excess of \$10,000 per year in snake sales, they might be properly thought of as (very) small businesses or nascent small businesses, and they should be included as affected entities.

The Service concentrates only on snake retailers, ignoring snake wholesalers and intermediaries mentioned in submissions. "Gross revenue per company for the sale of species and subspecies of Python, Boa, and Eunectes is highly variable – *depending on whether or not the company focuses on wholesale or retail*, the size of the operation, what species/subspecies are involved, and if the focus is on a) imported or US bred animals and b) normal ('wild type') specimens or color morph/locality-specific varieties."(Emphasis added, PIJAC submission, p 3.) Ignoring wholesale operations reduces the volume of snake sales, because the same snake is often sold multiple times in the chain of distribution to its final owner.

The Service ignores pricing premiums for snakes. PIJAC's tables detail the pricing and import volumes for Pythons, Boas and Anacondas. (See: PIJAC submission pp11-15.) These tables show price premiums given for snakes of different morphological features and that were taken from different localities. These pricing premiums reach up to 60 times the price of a

“normal” snake. Yet, the Service does not factor pricing premiums into total sales estimates. For example, for the *Boa constrictor* a few sales of premium-priced *Imperator* could considerably increase the estimates total revenues for Boas.

The Service ignores the ancillary sales that snake sellers make due to these nine species. For snakes that cost less than \$200, it is likely that ancillary sales will exceed revenues from the sale of the snake. As snakes grow, new cages and greater quantities of food will need to be purchased. For some species, the impact of omitting ancillary sales will underestimate their impact on small business revenues by half.

### Conclusion

The Fish and Wildlife Services’ initial regulatory flexibility analysis does not provide a sufficient analysis of the impact on small businesses for the purposes of the rulemaking. It ignores and/or uses incomplete facts in the record. Instead of seeking out available information in a technically appropriate manner, the Service bases its industry/business information on groundless assumptions, extrapolations, and conjectures. In short, the Service’s regulatory flexibility analysis is not a complete, reliable, or convincing analysis of the impact of the proposed rule on small businesses involved in the trade of the nine snake species included in the proposed rule.