

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES ASSOCIATION)	
OF REPTILE KEEPERS, INC., et al.)	
)	
Plaintiffs,)	
)	Case No. 1:13-cv-02007-RDM
v.)	
)	
THE HONORABLE SALLY JEWELL, et al.)	
)	
Defendants.)	

**MOTION BY THE CENTER FOR INVASIVE SPECIES PREVENTION,
NATURAL AREAS ASSOCIATION AND THE WILDLIFE SOCIETY FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS’ OPPOSITION TO
PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

I. INTRODUCTION

The Center for Invasive Species Prevention, Natural Areas Association and The Wildlife Society (“*Amici*”) respectfully request leave to file an *Amicus Curiae* brief in support of Defendants’ opposition to Plaintiffs’ motion for a preliminary injunction. The detailed missions and interests of *Amici* are described in their Proposed Brief, attached as an exhibit hereto.

The Center for Invasive Species Prevention is a Maryland non-profit corporation, managed by science and policy professionals, that strives to advance policy and non-governmental approaches to prevent the introduction and spread of invasive species in the United States. The Natural Areas Association is an international non-profit organization dedicated to

serving natural area professionals and to advancing the preservation of natural diversity. The Wildlife Society is a non-profit scientific and educational association of more than 9,000 professional wildlife biologists and managers in every State dedicated to excellence in wildlife stewardship through science and education. All *Amici* belong to the National Environmental Coalition on Invasive Species, a coalition with the Mission Statement of (in pertinent part): *promot[ing] sound state, federal, and international policy that prevents harmful non-native, or invasive, species from being introduced, becoming established, and spreading in the United States.*

Amici submit the Proposed Brief to: 1) further that prevention goal for large, invasive and dangerous, constrictor snakes, and 2) conserve the integrity of the Lacey Act “injurious species” regulation provision, 18 U.S.C. §42(a)(1), from the unprecedented legal challenge that the United States Association of Reptile Keepers (USARK), as well as other Plaintiffs, have mounted against it, which would eliminate much of its effectiveness.

II. LEGAL BASIS FOR MOTION

District courts have wide discretion in deciding whether to grant leave to file an *amicus curiae* brief. See *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007). This Court has often permitted third parties to file *amicus* briefs in cases where the outcome of the case would have an impact on those *amici*.

Under D.C. Circuit Rule 29(a), an *amicus curiae* brief “must avoid repetition of facts or legal arguments made in the principal . . . brief and focus on points not made or adequately elaborated upon in the principal brief.” (See also Fed. R. App. P. 29, Notes of Advisory Committee on 1998 Amendments, Note to Subdivision (b), in pertinent part: “An *amicus curiae*

brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.....)

On April 21, *Amici's* Counsel contacted Plaintiffs' and Defendants' Counsel to determine whether they consent to the filing of *Amici's* Brief. Plaintiffs' Counsel indicated they would oppose this Motion for Leave and Defendants' Counsel stated that they would take no position on it.

III. INTERESTS AND PERSPECTIVES OF PROPOSED *AMICI*

Proposed *Amici* here have important interests unrepresented now by any Party. As organizations comprised of conservation, scientific and land management professionals concerned especially about environmental protection and wildlife, *Amici* will provide new, expert perspectives. The Court has already allowed the Humane Society of the United States (HSUS) leave to file an *Amicus* brief. ECF No. 37. The HSUS, as an animal welfare organization, provides a valuable, but distinct, perspective compared to that of the *Amici* conservation and scientific organizations.

Amici's Brief discusses in detail how the disposition of the two broad sweeping USARK claims in particular would affect *Amici*: Counts One and Two in which USARK seeks an unprecedented declaration that the Secretary of the Interior's regulatory power under 18 U.S.C. §42(a)(1) does not include authority to regulate interstate commerce in the continental States. Second Amended Complaint (SAC), ECF No. 27-1, ¶¶ 103 through 117. If USARK succeeds it would directly harm *Amici's* and the public's interests in regulating the interstate spread of harmful invasive species.

As their Brief explains *Amici* also will be affected due to the pendency of other injurious species listing Petitions under 18 U.S.C. §42(a)(1) and proposals which *Amici* organizations support. The scope of any new regulations would be directly diminished if USARK were to prevail on its Counts One or Two. *Amici* also would be affected by the frustration of their long years of advocating for more comprehensive implementation of 18 U.S.C. §42(a)(1), which would be drastically undercut if USARK prevails on Counts One or Two. In short, there is no doubt *Amici*'s interests could be directly affected by the outcome of this case.

In addition, *Amici*, consisting to a large extent of conservation professionals and land area managers have a strong stake, as does the American public at large, in avoiding any additional large constrictor snake invasions in the nation's public and private natural areas. If USARK et al. were to obtain their sought-after preliminary injunction against implementation of the listing regulations at issue, the likelihood of additional invasions would increase. Indeed, as discussed in the Brief, at least two new invasions of breeding populations of these snakes occurred during the nine year period that the listing regulations took to be developed, adopted and implemented.

Amici moved as expeditiously as they reasonably could in filing this Motion, once USARK et al. rapidly pressed their case for a Temporary Restraining Order (TRO) just three weeks ago. ECF No. 28. As two of the *Amici* are large, diverse associations mostly composed of scientists and land managers around the nation, time was needed to obtain their approval for the drafted Brief.

Counsel has read all of the Parties' Briefs filed during the TRO and Preliminary Injunction phases and the Court's Order of April 8 setting forth the supplement briefing questions that the Court seeks information on now. ECF No. 37. This include the Parties' two Supplemental Memoranda filed in support of their respective position on April 20. ECF No. 44

(Federal Defendants) and ECF No. 45 (Plaintiffs). The attached Proposed Brief includes *Amici's* new information on the significance of the statutory additions by Congress of the zebra mussel and the bighead carp to the Lacey Act injurious species list, as the Court requested.

In addition the Brief addresses other points the Parties have not addressed fully. In particular, *Amici* provide science-based arguments about why a preliminary injunction against the maintenance of the current Federal listings of the eight constrictor snake species would be strongly contrary to the public interest and a serious risk to the environment and America's native wildlife heritage.

IV. CONCLUSION

The attached Proposed Brief is an appropriate *Amicus Curiae* filing that will provide the Court useful and relevant information. The Court is requested to grant permission to the Center for Invasive Species Prevention, Natural Areas Association and The Wildlife Society to file their *Amicus* Brief.

Dated: April 22, 2015

Respectfully submitted,

/s/ _____

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