

New Court Ruling Undermines Federal Injurious Animal Regulation

- And Other Related Topics -

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Non-native Wildlife: can be listed as
“injurious” under 18 U.S.C. sec. 42:



Snakes process: Long and twisted



May 12, MEMORANDUM OPINION – Injunction Granted

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES ASSOCIATION
OF REPTILE KEEPERS, INC., et al.

Plaintiffs,

V.

THE HONORABLE SALLY JEWELL, et al.

Defendants.

Case No. 1:13-cv-02007-RDM

Key Dates

1960 – current language. Secretary of the Interior can prohibit:

- “...The importation into the United States, any territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, *or any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States,* of [certain enumerated species]....which the Secretarymay prescribe by regulation to be injurious....”

Key Dates

- 1960 to 1989 - USFWS interpretation did not include regulation of commerce among the 49 Continental States for “injurious species” listings
- 1989 – USFWS started including interstate commerce regulation in listing explanations, first for the Mitten Crab

Key Dates

- 1990 - Congress directly listed zebra mussel with some leg. history indicating interstate commerce should be regulated
- 1990 to 2015 – Consistent interpretation by USFWS to regulate interstate commerce
- 2010 – Bighead carp added by Congress with clear purpose to regulate interstate commerce

Judge Moss examined later Congressional intent in mussel and carp listings but said:

Because the Court has concluded that the meaning of the Lacey Act's relevant language was clear at the time of its enactment in 1960, Congress cannot be deemed to have adopted an alternative construction of the statute through ratification, particularly where it did not amend—or even discuss—the relevant language

Judge Moss concluded:

For the Court to conclude that Congress impliedly amended the law in this fundamental respect without further evidence of affirmative congressional intent—or an irreconcilable conflict—would short circuit the legislative process.

Accordingly, the Court concludes that Plaintiffs are likely to succeed on the merits of their statutory interpretation claim.

Injunction Pending Resolution by the Court of Appeals

- *Special Injunction Provisions:*
Texas and Florida

Huge Regulatory Gap

- Now lack regulatory authority over commerce among the 49 Continental States
- High risk for more spread of invaders:
 - northern snakeheads
 - Asian carps
 - zebra and quagga mussels
 - large constrictor snakes
 - Bsal, if it is found in the US

Next Steps?

- Appeal - resolve within ~ 8 months
- Odds? \sim for USARK
- Congressional fix? PROs and CONs

18 USC sec. 42 was already too weak - Broad agreement: the system is too slow and reactive

Fowler, A.J., D.M. Lodge and J. Hsia. 2007. Failure of the Lacey Act to protect US ecosystems against animal invasions.

Frontiers in Ecology and the Environment

Need - new legislation

- Need new authority to prevent high and medium risk imports - **and clear authority over interstate commerce**
- Proactively assess species for invasiveness and disease risk using modern tools
- Clear emergency authority especially for diseases like Bsal

One Solution:

HR 996/ S. 1153 – 113th Congress

Invasive Fish and Wildlife Prevention Act

- Not reintroduced in this Congress yet

Emerging Wildlife Disease

Bsal – Salamander imports

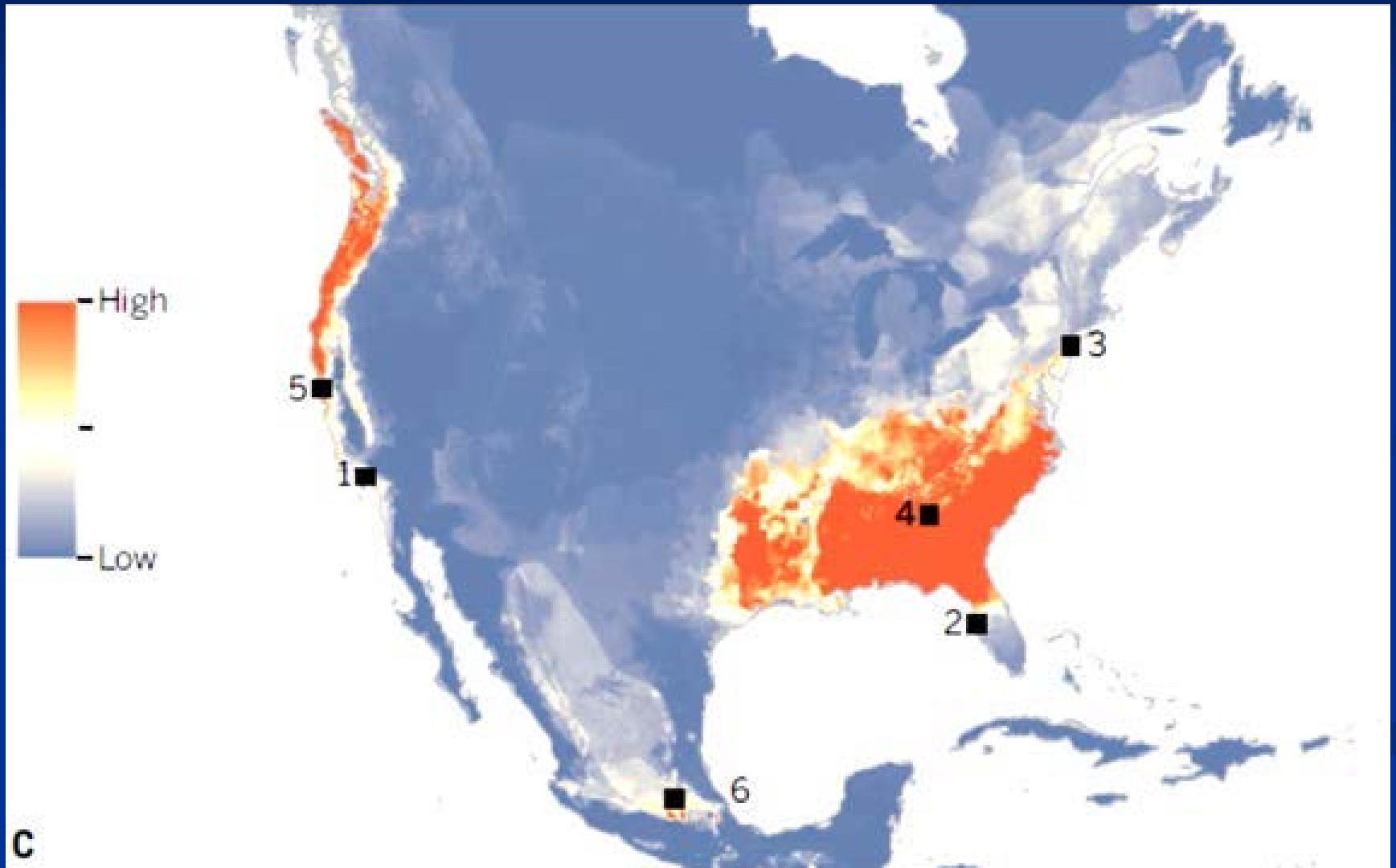
- 2013
- 2014- Martel et al.
 - Southeastern U.S. most at risk
 - Recent paper: Yap et al.

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■ ***Averting a North American
biodiversity crisis***

A newly described pathogen poses a major threat to salamanders via trade

Yap et al. – Risk Map



■ Moratorium/Clean Trade Regulation

- urgent need – prevention opportunity
- strong support, including from importers: PIJAC, AZA, even USARK
- ~ 1 year delay
- - effect of USARK Court ruling ?

- Bsal – Exhibit A in why wildlife health protections need modernizing
- Compare:
 - APHIS for livestock and plant pathogens
 - CDC for human pathogens

Proposed legislation: *America's Wildlife Health Protection Act of 2015*

- AFWA + ASA + NECIS

USFWS Risk Assessments FOIA

- - back to NISC 2001 Management Plan

1,975 total species screened

- 714 RAs written up
- 179 RAs finalized
- 18 RAs are on FWS webpage
- I have other 161 final RA pdf.s
- 535 “draft” RAs not produced

- broad species coverage: e.g. Red lionfish

*U.S. Fish and Wildlife Service Devil Firefish
(Pterois miles) Ecological Risk Screening Summary
Web Version—07/28/2014*

- post on website: FWS? NECIS? CISP?

www.fws.gov/injuriouswildlife/Injurious_prevention.html

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Comments? Questions?



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