

## **A “Positive List” Approach to Exotic Pet Regulation**

### **Introduction**

The trading and keeping of exotic (wild) animals as pets can disrupt ecosystems, threaten wildlife populations, pose public health and safety risks, and cause widespread animal suffering. The *European Convention for the Protection of Pet Animals*<sup>1</sup> states that keeping wild animals as pets should not be encouraged. However, many people currently keep exotic pets and this trend is active. As this is the case, it is necessary to rethink current legislation to make the regulation of exotic animals as efficient and effective as possible to mitigate against the potential harmful outcomes posed by the exotic animal trade. The majority of Canada’s municipal and provincial legislation on this matter incorporates a prohibited list, also known as a “negative list”, approach. Unfortunately, this approach is of limited effectiveness as it is unable to properly address exotic animal trade and keeping trends, it is often overly complex and therefore difficult to enforce. However, some Canadian jurisdictions, including the Province of New Brunswick and several municipalities have adopted the permitted or positive list approach. In addition, numerous European Union (EU) countries have already adopted, or have indicated their intention to adopt, a positive list approach. Notable among those already in place are in the countries of Belgium and the Netherlands

### **Private Ownership of Exotic Animals: A Community Concern**

Many exotic animals are not suitable for home keeping, and there are many serious concerns that legislation controlling the exotic animal keeping must address. Specifically, these matters are: public health and safety, animal welfare, wildlife conservation and environmental protection. In addition, a number of additional concerns associated with private keeping of exotic animals as pets include, but are not limited to, excessive noise, unpleasant odours, inappropriate waste management and decreased property values.

#### **i. Animal Welfare**

It is not within the parameters of this paper to go into exhaustive detail about animal welfare concerns associated with the keeping of exotic animals in home situations. However, it is important to provide a general overview of the issues that animals in these circumstances may experience. Simply keeping exotic animals as pets does not adjust them to being captive, and they cannot be considered domestic similar to other, more traditional pets, in most cases.<sup>2</sup>

Some exotic animals (e.g., many reptiles) are erroneously promoted as being “easy pets”<sup>3</sup> that require minimal amounts of space, attention and maintenance. However, most exotic animals are very complex creatures with varying and specific biological and behavioural needs that are difficult or, in some cases, impossible to satisfy. The average consumer who purchases exotic animals, especially those species that are mass-marketed, typically has little or no understanding of how these animals function or what their true bio/behavioural needs are. Exotic animals in home situations can experience poor diet, inadequate heating or cooling, improper nutrition,

and a lack of veterinary care.<sup>4</sup> This can cause these animals a great deal of suffering, injury, illness and premature death.<sup>5</sup>

## **ii. Public Health and Safety**

Additionally, the exotic animal trade poses a risk to human health and safety. Zoonoses, (diseases that are transmissible to humans from other animals) are a serious concern, and are considered to be one of the most significant current threats to human health.<sup>6</sup> Many exotic animal species also cause a danger to human safety due to their size, strength, venom, teeth, claws or temperament. One notable example in New Brunswick, Canada occurred when a African rock python killed two young boys in 2013.<sup>7</sup>

## **iii. Environmental Protection**

Exotic animals kept as pets may be abandoned by their owners or otherwise released into the wild.<sup>8</sup> Because these animals are not typically native to areas they are released into, they can pose a threat to existing native wildlife and ecosystems.<sup>9</sup> In many areas of Europe, the exotic pet trade is among the leading causes of the introduction of invasive alien species.<sup>10</sup> In North America, the State of Florida alone has more than 45 introduced reptile species, most assumed to have originated from released exotic pets. There is evidence to suggest that newly introduced species can cause heightened decline in the populations of other species, which may pose a threat to biodiversity.<sup>11</sup> In the United States, more than 120 billion dollars is spent annually mitigating the impact of invasive alien species.<sup>12</sup>

In addition, exotic pets may pose a significant disease risk to native wildlife populations. Probably the best known example is chytrid fungus which is now playing a major role in the demise of wild frog populations globally. A related salamander chytrid fungus has been identified, prompting the United States to ban trade in 201 salamander and newt species, because of the risk posed to native salamander and newt populations.

## **Positive Lists and Negative Lists**

The approach taken in many Canadian and European jurisdictions is the Negative List approach. This is where specific species are banned from being kept by private owners or anyone not exempted in the law or regulation in which the list of prohibited species is situated. Standard exemptions may include zoos, wildlife rehabilitation centers, and research projects who obtain a permit or another type of authorization.<sup>13</sup> Negative Lists often focus on prohibiting species that pose a risk to public safety.<sup>14</sup>

Even though many jurisdictions utilize a Negative List approach to exotic animal laws and regulations, the Positive List approach is gaining ground. A Positive List is one in which the only animal species listed are those that are allowed. Any animal species not on the list is prohibited, except where exemptions apply. Belgium has adopted a Positive List system since 2001 to deal with the exotic pet industry,<sup>15</sup> and The Netherlands did the same in February 2015.<sup>16</sup> Many other European countries are moving towards a Positive List approach.<sup>17</sup>

## **Belgium: The Positive List Approach**

Belgium was one of the first countries to adopt a Positive List approach and is a useful case study to understanding and learning how to address exotic animal issues. In the nearly 15 years since it was adopted, fewer exotic pets have ended up in rescue shelters and there has been a demonstrable reduction in the illegal trade of these species.<sup>18</sup>

Under Belgium's system, a scientific approach is taken to determine whether a species is acceptable for private keeping. A species can only be permitted if the following conditions are met:

- Their biological needs must be easily respected and able to be met in captivity in a private home;
- They do not create a public health and safety hazard;
- They will not pose a threat to surrounding wildlife populations or ecosystems if they escape or are released, and;
- Extensive data exists describing the care of the species in captivity.<sup>19</sup>

If there is any doubt regarding the suitability of the species being sold and kept, the species is not allowed.<sup>20</sup> As of July 2013, Belgium's positive list included 42 species.<sup>21</sup> Additionally, the Belgian model allows for some exemptions where a person can prove they possess the knowledge, equipment and skills required to keep a prohibited species.<sup>22</sup>

In early 2015, the Netherlands adopted a new Positive List regulatory regime. Their framework limits which animals may be kept by prohibiting all animal species not included on the Positive List or without a special permit.<sup>23</sup> Animal behaviour is a key determinant of whether a species is acceptable or not.<sup>24</sup>

## **The Legal Landscape in Canada**

Most jurisdictions in Canada practice a Negative List approach to regulating exotic animal species. One notable exception is the province of New Brunswick, where all exotics are prohibited under the *Fish and Wildlife Act*,<sup>25</sup> unless they are on the "exempted list" in the *Exotic Wildlife Regulation*.<sup>26</sup> A person can apply to receive a permit from the Department of Natural Resources if a species is not exempted.<sup>27</sup> As of June 2015, approximately 700 species (this includes entire categories of animals, such as all parrots) were exempted.<sup>28</sup> These 700 species are all considered to pose no significant threat to public health and safety or to the surrounding ecosystems should they escape or be released.<sup>29</sup> However, animal welfare groups point out that the list was formulated with significant input from the pet industry and therefore includes many species that are problematic from an animal welfare, human health and environmental/disease perspective.

## **Why a Positive List Approach in Canada**

Positive Lists are the most efficient, clear, easily maintained and enforced form of exotic pet regulation.

### **i. Keeping up with a Constantly Changing Industry**

Trends in the trade of exotic animals shift and change over time, and Negative Lists are not able to keep pace with these changes.<sup>30</sup> In order to effectively address new information and issues, particularly regarding species that pose a threat to human health and safety and/or environmental protection, as well as animal welfare, Negative Lists require constant review and updating. Many jurisdictions who use Negative Lists do not incorporate an effective procedure for updates and changes.<sup>31</sup> The process of adding an animal to a Negative List can also be very slow, with new additions of any kind being vigorously opposed by the pet industry and private pet keepers. Since Negative Lists are reactive, instead of proactive, they may permit the prolonged keeping of potentially dangerous species.<sup>32</sup>

Alternatively, Positive Lists are easily amendable and take a precautionary approach. Positive Lists don't allow the keeping of exotic animal species, unless scientific research deems a species appropriate to be a pet<sup>33</sup> or other criteria are satisfied.

### **ii. Clarity**

Positive Lists are clearer and allow the public to understand, at a glance, what the law is. The lists tend to be much shorter, and, as previously noted, are easier to update. If a species is not on the list, it cannot be kept. In contrast, Negative Lists may be very long and require a degree of expertise to understand, leaving laypersons confused about which animals are permitted and which are not. They may also require cross-checking between lists, and determining whether or not specific species fall under a prohibited species category.<sup>34</sup>

### **iii. Enforcement**

Enforcement personnel may find Negative Lists difficult to understand and interpret. For example, when a new species is added to a Negative List, existing members of that species are typically grandfathered (meaning they will be allowed to stay but cannot be replaced or bred). For some kinds of animals (e.g., birds, reptiles), if large numbers are present it may be beyond the ability of the enforcement personnel to identify which species are legal (especially if there are multiple similar looking species) and which are not, as well as which individual animals are grandfathered.

### **iv. Efficacy in Aiding Safety and Welfare Concerns**

The Positive List framework places the burden of proof on anyone who wants to keep an exotic animal species. If they want to have an animal on the list they have to prove that the species satisfies whatever criteria are in place for inclusion. With Negative Lists, the government or designated regulatory body often does not prohibit a specific species until there is a problem with it, such as a human health and safety threat, inability of shelters to accommodate the species, or lack of easily available, scientific husbandry and housing information. As discovered in the Belgian experience, Positive Lists can be helpful in keeping the public safe by reducing the illegal trade of exotic animals, and keeping animals out of shelters.<sup>35</sup>

Further, the Positive List approach is more in line with the general form that Canadian regulatory law takes, as opposed to the Negative List approach. In regulating other matters,

such as health care products, the subject will be tested and verified to be safe before the public is able to legally access it. Because exotic animals can pose a variety of risks to human health and safety, as well as the environment, this is the appropriate framework for all levels of Canadian government to take.

### **Selecting Suitable Species**

In order to shift to a Positive List, it may be necessary to create objective scientific and other criteria for determining which species are least problematic for keeping by private citizens. As stated previously, these criteria should include, but not necessarily be limited to, human health and safety, environmental protection and animal welfare. Other criteria that potentially could be included are availability of independent, scientific housing and husbandry information, availability of appropriate veterinary care, ability of local shelters and humane societies to accommodate species if seized, etc.

When determining which species are suitable to add to a Positive List, the following are some factors that ought to be taken into account:

- Evidence around invasiveness of the species,<sup>36</sup> and that there is overall no relevant threat to the environment should the animal escape or be let into the wild;
- There is relative ease to providing good husbandry to that species in captivity,<sup>37</sup> and that the welfare of the animal will be maintained fully in captivity in a private home, based on their particular needs;
- Regulatory bodies possess expert knowledge and skill required to assess the suitability of the species;
- No relevant threat to the public will arise if the species is permitted to be kept as a pet;

In addition, a process should be formulated to address members of prohibited species that are already in a jurisdiction. This could include some kind of regulation, such as requiring a permit for grandfathered animals or allowing a phase-in period in which non-listed animals must be moved out of the jurisdiction.

### **Conclusion**

It is well established that the exotic pet trade poses a significant threat to human health and safety, the integrity of natural ecosystems and to animal welfare. In many jurisdictions, exotic pets kept by private citizens may also pose a nuisance issue, place an unacceptable burden on municipal animal control staff and local humane societies and unnecessarily deplete the limited budgets of these departments, agencies and organizations. One significant step toward addressing the range of concerns and issues associated with the private keeping of exotic animals as pets is through the adoption of Positive Lists. In addition to placing the onus on those who want to sell or keep exotic animals to prove they will not be problematic, Positive List regimes are clearer, easier to understand, less of an administrative burden and more cost-effective.

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<sup>1</sup> 3 March 1973, CETS No 125.

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- <sup>2</sup> *Review of exotic pet trade: Cabinet Secretary commits to review of trade and importation of exotic animals as pets* (Government News) (Scotland, 2015), online: The Scottish Government < <http://news.scotland.gov.uk/News/Review-of-exotic-pet-trade-15ea.aspx>>
- <sup>3</sup> “Major new Restrictions on Exotic Pet Keeping in the Netherlands Raise Hopes that UK will Follow” *PR Newswire* (2 February 2015), online: <<http://www.prnewswire.co.uk/news-releases/major-new-restrictions-on-exotic-pet-keeping-in-the-netherlands-raise-hopes-that-uk-will-follow-290526001.html>>
- <sup>4</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 11.
- <sup>5</sup> *Review of exotic pet trade: Cabinet Secretary commits to review of trade and importation of exotic animals as pets* (Government News) (Scotland, 2015), online: The Scottish Government < <http://news.scotland.gov.uk/News/Review-of-exotic-pet-trade-15ea.aspx>>
- <sup>6</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 12.
- <sup>7</sup> The Honourable Denis Landry, *Report of the Exotic Animal Task Force*, online: The Minister of Natural Resources <<http://www2.gnb.ca/content/dam/gnb/Departments/nr-rn/pdf/en/Publications/ExoticAnimalReport.pdf>> at page 1.
- <sup>8</sup> *Review of exotic pet trade: Cabinet Secretary commits to review of trade and importation of exotic animals as pets* (Government News) (Scotland, 2015), online: The Scottish Government < <http://news.scotland.gov.uk/News/Review-of-exotic-pet-trade-15ea.aspx>>
- <sup>9</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 12.
- <sup>10</sup> *Ibid*, at page 12.
- <sup>11</sup> *Ibid*, at page 12.
- <sup>12</sup> *The Use of Positive Lists to Identify Exotic Species Suitable to be Kept as Pets in the EU*, 2012, ENDCAP, at page 1.
- <sup>13</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 13.
- <sup>14</sup> *Ibid*, at page 14.
- <sup>15</sup> “Major new Restrictions on Exotic Pet Keeping in the Netherlands Raise Hopes that UK will Follow” *PR Newswire* (2 February 2015), online: <<http://www.prnewswire.co.uk/news-releases/major-new-restrictions-on-exotic-pet-keeping-in-the-netherlands-raise-hopes-that-uk-will-follow-290526001.html>>.
- <sup>16</sup> *Ibid*.
- <sup>17</sup> *Ibid*.
- <sup>18</sup> *Ibid*.
- <sup>19</sup> *The Use of Positive Lists to Identify Exotic Species Suitable to be Kept as Pets in the EU*, 2012, ENDCAP, at page 2.
- <sup>20</sup> *Ibid*, at page 2.
- <sup>21</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 13.
- <sup>22</sup> *Ibid*, at page 13.
- <sup>23</sup> “Major new Restrictions on Exotic Pet Keeping in the Netherlands Raise Hopes that UK will Follow” *PR Newswire* (2 February 2015), online: <<http://www.prnewswire.co.uk/news-releases/major-new-restrictions-on-exotic-pet-keeping-in-the-netherlands-raise-hopes-that-uk-will-follow-290526001.html>>
- <sup>24</sup> *Ibid*.
- <sup>25</sup> SNB 1980, c F-14.1.
- <sup>26</sup> NB Reg 92-74.
- <sup>27</sup> The Honourable Denis Landry, *Report of the Exotic Animal Task Force*, online: The Minister of Natural Resources <<http://www2.gnb.ca/content/dam/gnb/Departments/nr-rn/pdf/en/Publications/ExoticAnimalReport.pdf>> at page 4.
- <sup>28</sup> *Ibid*, at page 5.
- <sup>29</sup> *Ibid*, at page 5.
- <sup>30</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 14.
- <sup>31</sup> Sofie de Volder, *Analysis of national legislation related to the keeping and sale of exotic pets in Europe*, 2013, Eurogroup for Animals, at page 14.
- <sup>32</sup> *Ibid*, at page 12.
- <sup>33</sup> *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36, at s 11.3.1.
- <sup>34</sup> *Review of exotic pet trade: Cabinet Secretary commits to review of trade and importation of exotic animals as pets* (Government News) (Scotland, 2015), online: The Scottish Government < <http://news.scotland.gov.uk/News/Review-of-exotic-pet-trade-15ea.aspx>>
- <sup>35</sup> *The Use of Positive Lists to Identify Exotic Species Suitable to be Kept as Pets in the EU*, 2012, ENDCAP, at page 2.
- <sup>36</sup> *Review of exotic pet trade: Cabinet Secretary commits to review of trade and importation of exotic animals as pets* (Government News) (Scotland, 2015), online: The Scottish Government < <http://news.scotland.gov.uk/News/Review-of-exotic-pet-trade-15ea.aspx>>
- <sup>37</sup> *Ibid*.