



Nationally Important Aquatic Species Petitioned for Federal Regulation

Issue

The U.S. Fish and Wildlife Service (FWS) received a petition on September 23, 2016 to list 43 native and nonnative aquatic species as Injurious Wildlife under the authority granted by the Lacey Act. The petition includes the black acara, blue catfish, common carp (i.e., koi), grass carp, guppies, Jaguar guapote, three plecos (Amazon, Orinoco and vermiculated sailfin catfish), red swamp crawfish, and three tilapias (i.e., blue, Mozambique and Nile). Upon listing, these live animals and their gametes, viable eggs or hybrids may not be imported into the United States or transported interstate. The petition is predicated upon rapidly performed ecological risk screens, termed Ecological Risk Screening Summaries (ERSS), completed by the FWS and posted to a public website. Each species has been identified as “high risk” by the FWS.

Action

Growers, distributors, sellers, users, consumers or hobbyists that may oppose this petition should distribute this publication and become familiar with the ERSS reports and the Injurious Wildlife petitioning process. The FWS’s Injurious Wildlife listing process may take months to complete which will allow time to share information and prepare written comments. Information that will inform the FWS about these species includes:

- The value, economic, ecological or aesthetic, of these species to your farm, business, hobby or the environment.
- State or local regulations that govern culture, possession or sale and estimated regulatory costs.
- The physical and practical methods that are implemented to prevent escape.
- Observations or published papers that describe or assess whether the species and species hybrids pose a risk to the environment, humans or the economic interests of the United States.

The FWS welcomes the public to provide informal input at this stage in the petition process; although, information provided at this time will not be part of a formal public review process or comment period. The FWS is processing the petition consistent with the agency's regulations found at 43 CFR part 14. When the FWS receives a petition from the public for Injurious Wildlife, they assess the petition and may find that no action is warranted, formally go out to the public with a Notice of Inquiry, or proceed with rulemaking for all or a portion of the petitioned species.

Send comments to:

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Branch of Aquatic Invasive Species
U.S. Fish and Wildlife Service
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Falls Church, VA 22041
Telephone: 703-358-1932
Email: craig_martin@fws.gov

Send a copy of your comments to:

National Aquaculture Association
PO Box 12759
Tallahassee, FL 32317-2759
Telephone: 850-216-2400
Email: naa@thenaa.net

Background

The U.S. Fish and Wildlife Service and the Lacey Act

The FWS is the primary federal agency for enforcement of the Lacey Act, a law designed to protect our nation's wildlife resources. Within the Lacey Act is a provision for listing wildlife as injurious when they have been proven to be "injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or wildlife resources of the United States." When first written in 1900 the list included 81 species – English sparrow, starling, mongoose or merkat (60 species), and fruit bat (19 species). Today the list includes 92 mammals, 6+ birds, 142 fish, 201 amphibians, 2 crustaceans, 1 mollusc, and 5 snakes. The recent addition of the 201 native and nonnative salamanders is the first instance where native species have been listed. For more information please visit:

<https://www.fws.gov/injuriouswildlife/index.html>.

Once a species is listed by the FWS as Injurious Wildlife, importation is forbidden into the United States and its territories except under strict permitting for scientific research or institutional exhibits. While currently under judicial scrutiny due to a legal challenge, Injurious Wildlife are also prohibited for interstate movement or trade. Therefore, once listed, there is essentially no commercial value of an Injurious Wildlife species and commercial or personal transport of Injurious Wildlife across state lines and importation is a federal crime. Due to this very serious impact, the process for listing species has been deliberate, based on science and a full assessment of the pros and cons of listing or not, especially when there was an impact to businesses in the United States. For more information, please visit:

https://www.fws.gov/injuriouswildlife/pdf_files/InjuriousWildlifeFactSheet2013.pdf.

Listing Injurious Wildlife

Concern has been repeatedly expressed by many involved in natural resource management that the amount of time it takes to list a species as Injurious Wildlife, often results in only listing species after they have become established as a population and caused environmental or economic damage. Notably, the Lacey Act does not establish a time frame for the FWS to reach a listing decision. As a result, some listings have occurred as a direct Congressional action, such as the 2012 listing of five large constrictor snakes, or through an interim rule proposed by FWS, such as the 2016 listing of 201 salamanders. A variety of interested and concerned scientists, regulatory agencies and the public have been advocating a focus on "pre-screening" species using less expensive and quicker screening processes. Others have sought an exemption from the need to assess the impact to private businesses that a listing may have.

Ecological Risk Screening Summary

For the past seven years, the FWS has been developing and utilizing a rapid screening tool, identified as an Ecological Risk Screening Summary (ERSS), to quickly evaluate a species potential for becoming invasive. In 2015 the ERSS reports for some 150 species, many of which are native species or commonly traded in the United States were posted on a federal webpage. Despite numerous comments and recommendations by the National Aquaculture Association to add a full disclaimer to the ERSS reports that says the findings are uncertain, may contain errors and should not serve as a basis for federal regulation, the webpage remains active and has gained significant attention.

The FWS recently listed 11 nonnative aquatic species as Injurious Wildlife based primarily on these ERSS reports. These species are: crucian carp, Prussian carp, Eurasian minnow, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, wels catfish and the common yabby. The FWS has also

stated that 2,000 ERSS reports have been drafted and that approximately 10% of the species analyzed have been identified as “high risk.” For more information, please visit:

https://www.fws.gov/fisheries/ANS/species_erss.html.

Center for Invasive Species Prevention (CISP)

The Center for Invasive Species Prevention (CISP) publicly announced on September 30, 2016 that they had filed a petition with the FWS to declare 43 native and nonnative species as Injurious Wildlife. Their petition was based solely upon “high risk” ERSS reports produced and posted by the FWS. This petition includes native and nonnative species cultured, possessed or sold throughout the United States for food, water gardening, recreational fishing or biological control. These species, or their hybrids, are the black acara, blue catfish, common carp (i.e., koi), grass carp, guppies, Jaguar guapote, three plecos (Amazon, Orinoco and vermiculated sailfin catfish), red swamp crawfish, and three tilapias (i.e., blue, Mozambique and Nile). For more information, please visit: <http://www.nivemnic.us/cisp-files-multi-species-listing-petition-with-us-fish-wildlife-service-per-lacey-act/>.

Injurious Wildlife Listing Process

The FWS may begin an analysis to list a species, the public may petition for species to be listed as Injurious Wildlife or Congress may pass legislation to add a species to the Lacey Act. This process is illustrated in a diagram that can be accessed here:

https://www.fws.gov/injuriouswildlife/pdf_files/InjuriousWildlifeEvaluationProcessFlowChart.pdf.

The FWS gathers information, or may request information from the public, via a Federal Register notice to evaluate these following factors that may contribute to a species being considered injurious, including:

- Likelihood of release or escape.
- Potential to survive, become established and spread.
- Impacts on wildlife resources or ecosystems through hybridization and competition for food and habitats, habitat degradation and destruction, predation and pathogen transfer.
- Impacts to threatened and endangered species and their habitats.
- Impacts to human beings, forestry, horticulture and agriculture.
- Wildlife or habitat damages that may occur from control measures.

Second, the FWS evaluates factors that reduce the likelihood of the invasive species causing harm, including the:

- Ability to prevent escape and establishment.
- Potential to eradicate or manage established populations.
- Ability to rehabilitate disturbed ecosystems.
- Ability to prevent or control the spread of pathogens or parasites.
- Any potential ecological benefits to introduction.

Concerns with the Ecological Risk Screening Summary (ERSS)

The National Aquaculture Association (NAA) and other groups have made repeated and concerted efforts to interact and communicate with the FWS on the implementation of the ERSS, biological and climate match errors and incomplete information within the reports. We have offered expert advice and a list of outside experts to review the reports, agreed to voluntarily cease trade in species that were

determined a high risk and not in trade already, identified critical flaws in the ERSS rankings when discovered, and cautioned the FWS that posting the reports to a public webpage will trigger the public to, unquestioningly, accept the risk evaluations. Despite these efforts and comments, the FWS maintains the validity and value of the ERSS, declined stakeholder review, and refused to limit the publication of the results or to include a full disclaimer that they are based on a rapid screening tool and not an in-depth environmental risk analysis.

Further Action by the National Aquaculture Association (NAA)

The concerns of the NAA that ERSS “high risk” evaluations will be inappropriately applied to the United States by concerned citizens have been realized. The ERSS tool and reports are now being interpreted as a basis for regulation and final determination of invasiveness and injury to our nation and its resources. Going forward the NAA will be working to:

- To provide science, economic and state regulatory information to the FWS so that they may find there is no basis to accept the CISP petition and any others that may be submitted based primarily on the ERSS reports or any other rapid screening process.
- Stop the public posting of the ERSS reports that do not include: a full disclaimer of the uncertainties associated with quick risk screens, state regulatory and economic benefit information, and recognition that certain species appear to pose limited risk to certain locations within the United States, they do not pose a risk to the entire country.
- Achieve a full review of the process taken by the FWS staff in selection of the 11 species recently listed, including a thorough disclosure of how comments were received and evaluated, especially those that raised concerns over listing these species.
- A formal and independent review by subject matter experts of the 2,000 ERSS reports that have not yet been posted.

Additional Information

For additional information or to keep track of the petition, please call, write or email the National Aquaculture Association:

Injurious Wildlife Petition
National Aquaculture Association
PO Box 12759
Tallahassee, FL 32317
Telephone: 850-216-2400
Email: naa@thenaa.net

Worth Reading

Dierterle, C.J. 2014. The Lacey Act: A Case Study in the Mechanics of Overcriminalization. The Georgetown Law Journal. 102:1279 - 1306.

(<http://georgetownlawjournal.org/files/2014/04/DierterleLacey.pdf>).

Rumley, E.R. 2012. Aquaculture and the Lacey Act. Southern Regional Aquaculture Center. SRAC Publication No. 5005. (<http://fisheries.tamu.edu/files/2013/10/SRAC-Publication-No.-5005-Aquaculture-and-the-Lacey-Act.pdf>).

October 22, 2016