



The voice of fish and wildlife agencies

Hall of the States
444 North Capitol Street, NW
Suite 725 • Washington, D.C. 20001
Phone: 202-624-7890
Fax: 202-624-7891
E-mail: info@fishwildlife.org
www.fishwildlife.org

30 October 2013

Susan Jewell
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, Suite 700
Arlington, VA 22203

RE: **Categorical Exclusion (Proposed), FR Doc No. 2013-15707 (comment period reopened under FR Doc. 2013-19922)**

Dear Ms. Jewell:

I am writing on behalf of the Association of Fish and Wildlife Agencies (Association), in coordination with our Invasive Species Committee to provide comments for the Federal Register Notice (Doc. No: 2013-15707, and reopened under Doc No. 2013-19922) pertaining to the **National Environmental Policy Act: Implementing Procedures; Addition to Categorical Exclusions for U.S. Fish and Wildlife Service**. The Association thanks the US Fish and Wildlife Service (FWS) for allowing the opportunity to provide input on this proposed Categorical Exclusion, and we appreciate the effort by FWS to expedite listings of Injurious Wildlife under the Lacey Act (18 U.S.C. 42). We are aware that the official comment period is now closed, but wanted to provide you with our thoughts on this, and related issues.

As you know, the Association promotes sound fish and wildlife management, and serves as the collective voice of North America's fish and wildlife agencies. Our mission is to support and advocate for state, provincial, and territorial authority for fish and wildlife conservation. We have solicited comments from our Invasive Species Committee on the proposed Categorical Exclusion. While all of these comments indicated some level of support for measures to make the Injurious Wildlife listing process under the Lacey Act more efficient, most of this support stemmed from current frustration with the inordinate amount of time required for the FWS to list a species through the current petition process. Other members of the Association have concerns about the Categorical Exclusion proposal and the unintended consequences it could have on the NEPA process, including assessing the real economic impacts to states, industries, and others (i.e., the "human environment"). Consequently, the Association is not taking a formal stance on this matter.

We believe there is a larger issue surrounding the Lacey Act, including Injurious Wildlife listings, that needs to be addressed. In particular, the intent of the law with respect to Injurious Wildlife listings, as stated in the original Federal Register Notice, is "to protect human health and welfare and the human and natural environments of the United States by identifying and reducing the threat posed by certain wildlife species" and thus "prohibits the species from being imported into the United States or transported across State lines." These listings can be effective when they truly prevent importation of potentially harmful species, i.e., those that are **not** known to be present nor established in the wild, in the United States. In the latter instance, opportunities to streamline the listing process may be useful.

However, we are concerned that the trend in recent Injurious Wildlife listings demonstrates a loss of focus on the intent of the Lacey Act, and thus has inadvertently enabled Congress to create a separate "cause of action" for violations of the law independent of the states' underlying statutes. The law was enacted not only to prohibit entry of invasive species into the U.S., but to prosecute state laws that are violated. **As such, particularly for present or established species, we are concerned that Injurious Wildlife listings may contribute to an undesirable erosion of state authority for management of fish and wildlife.**

Further, we believe that the Lacey Act should be used as intended to elevate state law violations to federal offenses and thereby increase the potency of state laws.

The Association's Invasive Species Committee and staff have already begun to address our obligations to maintaining state authority in the following ways:

- We are developing a compilation of existing state laws and regulations relating to invasive species management with the intent of developing recommendations that can enhance existing laws and promote interstate cooperation and/or reciprocity.
- We are working on model state legislation for certain pathways of aquatic invasive species introductions and spread, specifically to help facilitate reciprocity among states.
- We are establishing a working group to begin implementation of the recently established Memorandum of Understanding (MOU) between FWS, the Pet Industry Joint Advisory Committee (PIJAC), and the Association, with respect to conducting risk screenings on species not currently in trade.

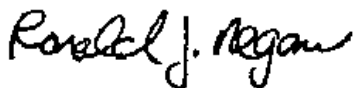
In order to facilitate further dialogue on this issue, **we offer the following recommendations:**

- The FWS should work closely with the state fish and wildlife agencies to identify the states' priority Injurious Wildlife concerns, which should, in turn, be used to facilitate the FWS' workload analysis for Injurious Wildlife petition responses and to prioritize listing processes.
- The FWS should implement methods, outside of the NEPA process, that reduce the time required to complete the Injurious Wildlife petition response and proposed listings, which has taken as long as 11 years for one species.
- The FWS should ensure that NEPA analyses for Injurious Wildlife include the human environment, in particular, the economic impact that the states would incur with respect to eradication and restoration following introductions of Injurious Wildlife, including due to unintended consequences as a result of the listings themselves.

We look forward to continuing to discuss this matter with the FWS, both through implementation of the aforementioned MOU and in other avenues. The Association remains committed to working through our states to prevent the introduction, and spread, of invasive species. We simply recognize that invasive species issues must be considered within the context of promoting state authority.

Thank you for the opportunity to provide comment.

Sincerely,



Ronald J. Regan
Executive Director

Cc: William Hyatt
Kim Bogenschutz
Jennifer Mock Schaeffer
M. Carol Bambery
Priya Nanjappa