

## **Advocacy Advises U.S. Fish and Wildlife Service to Address Small Business Concerns with Listing of Black Carp as an Injurious Species**

On December 16, 2005, the Office of Advocacy (Advocacy) sent a letter to the U.S. Fish and Wildlife Service (FWS), in response to the agency's proposed listing of the black carp as an injurious species, *Injurious Wildlife Species; Black Carp (Mylopharyngodon piceus)*, 70 *Fed. Reg.* 61933 (Oct. 27, 2005). Advocacy commented that the rule appeared to have been improperly certified as not having a significant economic impact on a substantial number of small entities, and recommended that FWS publish a regulatory flexibility analysis that discusses the rule's costs to small business fish farmers and regulatory alternatives that could eliminate or reduce those costs. A complete copy of Advocacy's letter to the FWS may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The Lacey Act of 1948 prohibits the interstate transportation of species of animals that FWS determines are "injurious" to humans, agriculture, horticulture, forestry, or wildlife. FWS lists species as "injurious" using the rulemaking process. Once a species is listed as injurious, it may not be transported across state lines, but possession of the animal may still be allowed, depending on the applicable state law.
- FWS proposed to list the black carp as injurious, thereby prohibiting its interstate transportation. The black carp is an imported Asian fish that has been used for decades to control snail populations in fish farms. Fish farmers control snails because the snails carry parasitic worms that attach themselves to fish and reduce the crop's value by causing the fish not to grow and decreasing the fish's value for human consumption.
- FWS certified its proposed rule as not likely to have a significant economic impact on a substantial number of small entities, but Advocacy does not believe the evidence the agency has received to date supports this conclusion.
- Advocacy recommended that FWS withdraw its determination that the rule would not have a significant economic impact on a substantial number of small entities and publish analysis of how the rule will actually affect small fish farms, as well as a discussion of regulatory alternatives. Advocacy specifically believes the agency should give greater consideration to other alternatives, such as only banning the interstate transportation of fertile black carp and allowing the interstate transportation of sterilized fish. Advocacy believes this alternative would greatly reduce or eliminate small business burdens from the rule, as well as achieve FWS' regulatory goals.

For more information, visit Advocacy's Web page at: <http://www.sba.gov/advo>, or contact assistant chief counsel Michael See by email at [michael.see@sba.gov](mailto:michael.see@sba.gov) or by phone at (202) 619-0312.