



11 Species Proposed Rule: Questions and Answers October 29, 2015

1. What action is the U.S. Fish and Wildlife Service (Service) taking?

Answer: The Service is announcing a proposed rule to list 10 nonnative freshwater fish species and 1 nonnative freshwater crayfish species as injurious wildlife under the Lacey Act. The fish are the crucian carp, Prussian carp, Eurasian minnow, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander and wels catfish. The crayfish is the common yabby. The proposed rule publishes in the *Federal Register* on October 30, 2015. For more information, please see our webpage at: www.fws.gov/injuriouswildlife/11-freshwater-species.html.

2. What does this injurious wildlife listing under the Lacey Act mean to the public?

Answer: Under 18 USC 42 of the Lacey Act, a species of wildlife can be listed as injurious because it has been demonstrated to be harmful or has the potential to be harmful to the health and welfare of humans; the interests of forestry, agriculture, or horticulture; the welfare and survival of wildlife; or the resources that wildlife depend upon.

To control the introduction and spread of an injurious species, the listing of the species as “injurious” under the Lacey Act means that its importation and interstate transport are prohibited without a permit issued by the Service. This prohibition includes importation or interstate transport of live animals, their gametes, hybrids and viable eggs.

Injurious species may not be imported into the United States or across state lines. Permits may be granted for the importation or transportation of live specimens of injurious wildlife for scientific, medical, educational or zoological purposes. The injurious wildlife listing does not restrict intrastate (within-State) transport. The injurious wildlife listing does not prohibit exportation from the United States. For more information, please visit <http://www.fws.gov/le/injurious-wildlife.html>.

3. How will the public be included in this decision?

Answer: The proposed rule opens a 60-day public comment period on the rule, the draft economic analysis, and the draft environmental assessment. The Service will review and consider the public and peer review comments and any new information we receive. The public comment period ends on December 29, 2015.

Please see the proposed rule in the *Federal Register* for instructions on how to submit public comments.

4. Will this rule be peer-reviewed?

Answer: The Service is soliciting comments from three peer reviewers under the guidelines for federal agencies from the Office of Management and Budget (OMB) (<https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>). A summary of the peer reviewers' comments and our responses to them will be included in the final rule.

5. If these species are not yet found in the United States, why list them as injurious?

Answer: Preventing injurious wildlife from entering the United States is widely considered the most economically effective and efficient management approach for avoiding the ecological damage and economic losses often caused by invasive species. For those few species that may already be in the United States, we believe that this regulation will help keep them from becoming established in ecosystems of the United States. The Service has previously listed species proactively (that is, before they became established), such as many species of snakeheads and walking catfishes, a species of Asian carp (largescale silver carp), the raccoon dog, the brushtail possum, and the southern African python.

6. Now that the proposed rule is published, what is the next step?

Answer: The Service will review the public comments (see Q. 3), and the peer review comments (see Q. 4), and any new information that we receive. If we receive new information that changes the results of our determination on any of the 11 species, we will re-evaluate whether it should be listed as injurious. If a determination is made to finalize the listing of a species as injurious after evaluating the comments we receive during this proposed rule's comment period, a final rule would be published. The final rule would contain responses to comments we receive on the proposed rule, state the final decision and provide the justification for that decision. Species added to the injurious list will be identified in the Code of Federal Regulations (in 50 CFR 16.13). We are not required to list the 11 species together as a group. For this final rule we will evaluate each of the species individually. We may list all, some, or none of the 11 species as injurious.

7. Why is the Service taking this action now?

Answer: The Service was not petitioned to list these species. However, after careful analysis, we consider them to be at high risk for invading U.S. ecosystems. If finalized, the proposed rule would help our nation proactively protect our natural resources while avoiding the potential ecological and economic losses associated with these organisms.

8. How was science involved in the Service's decision?

Answer: The Service determined its decision to propose the species as injurious based on two sets of scientific data.

First, the agency evaluated the factors that 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 Service evaluated 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.

The Service's scientific evaluation concludes that all 11 species qualify as injurious wildlife under the Lacey Act.

9. Are any of these fish or the crayfish a threat to humans?

Answer: None of the 11 species is known to be directly harmful to humans. None is venomous, poisonous or documented to prey on humans.

10. Will the live animal importers lose revenue and jobs as a result of this rule?

Answer: Of the 11 species, one species (yabby) has evidence of being in negligible trade in the United States; three species (crucian carp, Nile perch, and wels catfish) have been imported in only small numbers since 2011; and seven species are not in U.S. trade. Therefore, businesses derive little or no revenue from their sale, and the economic effect in the United States of this proposed rule would be negligible for some species and nil for the others. The Service has prepared a draft economic analysis to support this conclusion.

11. How can a person obtain a permit to move an injurious species across State lines or import one into the country?

Answer: During the proposed rule phase, the injurious wildlife prohibitions do not apply. If any of the proposed species becomes listed as injurious in a final rule, and you anticipate needing to import live individuals (or their gametes, hybrids, and viable eggs) of one or more of the 11 species or transport across a state line for zoological, educational, medical, or scientific purposes, you should apply for a permit from the U.S. Fish and Wildlife Service as soon as possible to allow up to 60 days for processing. Permits for scientific, medical, educational, or zoological purposes may be requested by filing form 3-200-42 with the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike Falls Church, VA 22041-3803. The

application form may be obtained through the Service's International Affairs website (<http://www.fws.gov/forms/3-200-42.pdf> or <http://www.fws.gov/permits>), or by calling 1-800-358-2104 or 703-358-2104.

12. If the proposed rule to list the 10 fish and 1 crayfish becomes final, will people be allowed to order the species on the Internet?

Answer: The sale or purchase of a live specimen of a listed species through the internet would not be permitted if the specimen crosses a state line (including coming from or going to the District of Columbia, Puerto Rico, and the U.S. territories), or is imported.

13. Can people import a species listed as injurious as a pet?

Answer: The injurious wildlife listing does not have provisions to allow the transport of personal pets. Therefore, if the proposed rule becomes final, none of the 11 species may be imported as a pet. The owners of any individuals of the 11 species proposed to be listed as injurious would still be allowed to keep them under this rule. For animals already in the United States, this rule restricts only interstate (between States) transportation. It will be lawful for pet owners to keep their pets (if allowed by State law).

14. Q: I do educational programs with species listed as injurious for schools, scouts, and other groups, sometimes in another State. Will I still be able to travel to other States?

Answer: If the proposed rule becomes final, you will need to apply for and obtain a permit from the Service to transport a listed species across a State line for educational purposes. (See also answer to Q. 11.)

15. What is the MOU that is mentioned in the Economic Analysis and the Environmental Assessment as one of the alternatives considered instead of listing?

Answer: The Memorandum of Understanding (MOU) is between the Service, Pet Industry Joint Advisory Council, and the Association of Fish and Wildlife Agencies¹ but is not limited to the parties in the MOU. Under the MOU, the Service provides the technical information on the risk of invasiveness of many nonnative species, and the live animal businesses voluntarily choose not to import those species determined by the Service to be high or uncertain risk. The 11 species were all high risk (for invasiveness) as determined by the Service through its risk screening processes, would be contenders for voluntary refrain from trade, and would not be listed as injurious at this time. Under the MOU, however, the Service does not relinquish the ability to list the species at some point.

16. What are Ecological Risk Screening Summaries and how were they used in the proposed rule?

¹ Memorandum of Understanding Between the United States Fish and Wildlife Service and the Pet Industry Joint Advisory Council and the Association Of Fish and Wildlife Agencies to Collaborate on the Development of Nonregulatory Approaches to Reduce the Risk of Introducing Potentially Invasive Species Through International Trade and to Promote Voluntary No-Trade in Certain Species Not Present in Trade. June 10, 2013. 11 pp.

Answer: The U.S. government's National Invasive Species Management Plan² states that preventing invasion is the first line of defense in managing invasive species. To support this effort, the Service was tasked with developing a screening process that evaluates different types of nonnative terrestrial and aquatic wildlife species moving in trade. The Ecological Risk Screening process, which was peer-reviewed by invasive species experts from the United States and Canada, was designed to meet that objective. Reports resulting from that screening process are called Ecological Risk Screening Summaries (ERSSs). ERSSs are used to characterize risk of species (primarily foreign ones), in relation to the United States, based on scientific characteristics that best predict invasiveness of many types of organisms. Those characteristics are history of invasiveness (establishment and effects outside species' native ranges) and climate match (comparing climate in native and invaded ranges with that of the United States). ERSSs for the 11 proposed species have been posted on the Service's website (http://www.fws.gov/injuriouswildlife/Injurious_prevention.html) for more than 3 years. The public was invited to submit information on the ERSS reports, such as new, substantive information, or to point out inaccuracies that might change our assessments, and may still do so.

² National Invasive Species Council. 2008. 2008 - 2012 National Invasive Species Management Plan. August 2008. 35 pp.