



Frequently Asked Questions

Categorical Exclusion for Listing Species as Injurious Wildlife

Q1: What is a categorical exclusion?

A1: A categorical exclusion is a class of actions under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, NEPA) that do not individually or cumulatively have a significant effect on the human environment. Under NEPA, Federal agencies are required to consider the potential environmental impact of agency actions prior to implementation. Agencies are then generally required to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). However, when a Federal agency identifies classes of actions that, under normal circumstances, do not have a potentially significant environmental impact, either individually or cumulatively, the Council on Environmental Quality (CEQ) regulations allow the agency to establish a categorical exclusion and to bypass the completion of an EA or an EIS when undertaking those actions.

Q2: Why is the U.S. Fish and Wildlife Service (Service) seeking a categorical exclusion?

A2: When appropriately established and applied, categorical exclusions serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive EAs or EISs. The Service recognizes that the current process of listing species as injurious under the Lacey Act (18 U.S.C. 42, as amended) has aspects that are inefficient and counterproductive to our mission of safeguarding our natural resources. Our listing process can take several years, and in that period, a species that could have been stopped at the border could become irreversibly established and invasive in U.S. environments. Therefore, the Service is seeking to refine the listing process by identifying steps of the process that can be improved.

One step that the Service examined is the NEPA requirements. We coordinated with the Department of the Interior's Office of Environmental Policy and Compliance (OEPC) and with CEQ, and we determined that an EA or EIS is generally not needed for the action of listing species as injurious.

Q3: What exactly is this categorical exclusion for?

A3: The proposed categorical exclusion would be added to the Department Manual as: "The adding of species to the list of injurious wildlife regulated under 50 CFR subchapter B, part 16, which prohibits the importation into the United States and interstate transportation of wildlife found to be injurious." In other words, neither an EA nor an EIS would be required for the regulatory listing action that places a species on a prohibited list under 50 CFR 16, which

prohibits their importation into the United States and across State borders. Thus, the activities covered under the categorical exclusion are simply to keep species out of the country that are injurious or to prevent their spread across State lines. Therefore, the action should have no effect on the human or natural environment, because the species being listed are not naturally found there.

Q4: What does injurious wildlife mean?

A4: As stated in Q3, this exclusion is only for the action of listing a species as injurious wildlife. The Lacey Act (18 U.S.C. 42) authorizes the Secretary of the Interior, as delegated to the Service, to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles, and the offspring or eggs of any of the aforementioned, that are injurious to human beings, or to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The provisions of the Lacey Act regarding injurious species are intended 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. Listing these species as injurious under the Act subsequently prohibits the species from being imported into the United States or transported across State lines. You can find more information on injurious wildlife at <http://www.fws.gov/injuriouswildlife>.

Q5: Why wouldn't an EA or EIS be needed for listing as injurious?

A5: An EA or EIS would be needed if the action could have a significant effect on the human environment. However, the listing action preserves the environmental status quo—that is, the action would have no effect on the environment. This is because injurious wildlife listings ensure that certain potential effects associated with introduction of species that have been found to be injurious do not occur. Thus, prohibiting a nonindigenous injurious species from being introduced into an area in which it does not naturally occur cannot have a significant effect on the human environment.

Another of the supporting justifications for the categorical exclusion is that the Service has prepared EAs on the previous actions of listing species, and all have shown that there would be no significant impact (that is, a “Finding of No Significant Impact” or FONSI). That each EA resulted in a FONSI strongly suggests that subsequent listings will also have no significant environmental impacts.

A third justification is that the proposed categorical exclusion also serves to make the listing process under the Act more efficient, and the listing process is designed to limit undesirable environmental effects in the future. Therefore, the categorical exclusion itself supports maintenance of the environmental status quo.

Q6: What doesn't the proposed categorical exclusion cover?

A6: The exclusion would not cover control actions (such as constructing barriers) or eradication actions (such as applying pesticides) for invasive or injurious species; the issuance of permits

(available for individual specimens intended for bona fide purposes of zoological, educational, medical, or scientific use) for injurious species, which is already covered under an existing categorical exclusion (516 DM 8.5 C(1)); and the removal of species from the injurious wildlife list. Additionally, the application of the proposed categorical exclusion would be subject to a review of extraordinary circumstances established in regulation by the Department of the Interior (see 50 CFR 46.215). Extraordinary circumstances would be subject to the factors or circumstances that would cause an otherwise categorically excludable action to require further analysis in an EA or EIS (see answer to **Q7** for more on “extraordinary circumstances”).

Q7: Will all future injurious wildlife listings be categorically excluded?

A7: Not necessarily. The Service must still review each listing action for “extraordinary circumstances.” Extraordinary circumstances would be subject to the factors or circumstances that would cause an otherwise categorically excludable action to require further analysis in an EA or EIS. Extraordinary circumstances include potential effects to environmentally sensitive areas or resources, and public controversy over the environmental effects of the agency’s proposed action. Some examples include the presence of a federally listed threatened or endangered species, a migratory bird species, or a Native American cultural site. If a review of the extraordinary circumstances discloses no potential environmental impacts, the agency may apply the Categorical Exclusion and proceed with their action (<http://ceq.hss.doe.gov/welcome.html>). Thus, notwithstanding the existence of this categorical exclusion, the Service would have to develop an EA or EIS if it found the extraordinary circumstances applied to the listing of a particular injurious species. You can find the list of extraordinary circumstances at http://www.fws.gov/habitatconservation/DOI_Extraordinary_Circumstances.pdf.

Q8: Where can I find more information on this categorical exclusion?

A8: You can find the *Federal Register* notice and other information on this categorical exclusion at <http://www.fws.gov/injuriouswildlife/catex>.

You can find the final general guidance for categorical exclusions from CEQ published in *Federal Register* (December 6, 2010) at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-06/pdf/2010-30017.pdf>

Q9: Can the public provide comments on this proposal?

A9: Yes, the public is welcome to submit comments by one of the following methods:

- *U.S. mail or hand delivery:* Susan Jewell, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 700, Arlington, VA 22203; or
- *Email:* prevent_invasives@fws.gov (emails must have “Categorical Exclusion” in the subject line).

Comments must be received by 30 days from the date of publication in the *Federal Register*.

Q10: What are the steps for preparing and receiving approval for a categorical exclusion?

A10: The steps are found in this *Federal Register* notice from CEQ at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-06/pdf/2010-30017.pdf>

After the close of the public comment period, the Service will (in coordination with OEPC):

1. Review and address the public comments,
2. Consult with CEQ on the public comments received and the proposed final categorical exclusion to obtain CEQ's written determination of conformity with NEPA and the CEQ regulations,
3. Publish the final categorical exclusion in the *Federal Register*,
4. File the categorical exclusion with CEQ; and
5. Make the categorical exclusion readily available to the public on the agency's website.

Q11: Where are the Service's current categorical exclusions found?

A11: All of the Service's categorical exclusions are found in the Department of the Interior's Department Manual. You can find the current categorical exclusions in chapter 8.5 of the Department Manual <http://elips.doi.gov/ELIPS/DocView.aspx?id=1739>

If the proposed categorical exclusion is finalized, it will appear as a change to the Department of the Interior's Department Manual at 516 DM 8.5 C (9).