

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 11-419; MB Docket No. 09-181; RM-11573]

Radio Broadcasting Services; Early and Lake Brownwood, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division dismisses the petition for rule making filed by Katherine Pyeatt, proposing the allotment of Channel 294C2 at Lake Brownwood; and grants the counterproposal filed by Mumbilla Broadcasting Properties, Ltd., requesting the allotment of Channel 294A at Early, Texas. Channel 294A can be allotted at Early, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 31-46-21 NL and 98-52-41 WL, with a site restriction of 7.2 km (4.5 miles) northeast of the community

DATES: Effective April 18, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-181, adopted March 2, 2011, and released March 4, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

List Of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

- 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

- 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Early, Channel 294A.

[FR Doc. 2011-6716 Filed 3-21-11; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 16**

[Docket No. FWS-R3-FHC-2010-0094; 94140-1342-0000-N5]

RIN 1018-AT49

Injurious Wildlife Species; Listing the Bighead Carp (*Hypophthalmichthys nobilis*) as Injurious Fish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds the bighead carp (*Hypophthalmichthys nobilis*), a large fish native to eastern Asia, to the list of injurious fish, mollusks, and crustaceans. The importation into the United States and interstate transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of all forms of live bighead carp, gametes, viable eggs, and hybrids thereof is prohibited, except by permit for zoological, education, medical, or scientific purposes (in accordance with permit regulation at 50 CFR 16.22) or by Federal agencies without a permit solely for their own use.

DATES: This rule is effective March 22, 2011.

ADDRESSES: The final rule and supporting documents will be available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R3-FHC-2010-0094.

FOR FURTHER INFORMATION CONTACT: Nate Caswell, Fish Biologist, U.S. Fish and Wildlife Service, Cartersville Fish and Wildlife Conservation Office, 9053 Rt. 148, Suite A, Marion, IL 62959; telephone 618-997-6869; facsimile 618-997-9185. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

In October 2002, the U.S. Fish and Wildlife Service (Service) received a petition signed by members of Congress representing the Great Lakes region to add bighead, silver, and black carp to the list of injurious wildlife under the Lacey Act (18 U.S.C. 42). In a final rule of July 10, 2007 (72 FR 37459), the Service added silver and largescale silver carp to the list of injurious wildlife at 50 CFR 16.13, and in a final rule of October 18, 2007 (72 FR 59019), the Service added black carp to this list. The Service published a **Federal Register** notice of inquiry on bighead carp (68 FR 54409; September 17, 2003) and provided a 60-day public comment period, but the listing process for this species was delayed. Another letter from members of Congress in 2009 supported the petitioned action for bighead carp.

The Asian Carp Prevention and Control Act (Pub. L. 111-307) was passed by the Senate on November 17, 2010, and by the House of Representatives on December 1, 2010, and signed into law by President Obama on December 14, 2010. The law amends the Lacey Act (18 U.S.C. 42) by adding the bighead carp (*Hypophthalmichthys nobilis*) to the list of injurious animals contained therein. The statutory prohibitions and exceptions for this species went into effect upon signature into law. This rule adds the bighead carp to the list of injurious fish, mollusks, and crustaceans at 50 CFR 16.13.

Description of the Final Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of that law, the importation and interstate transportation of certain named wildlife is prohibited, with exceptions. Additionally, the Secretary of the Interior is authorized to prescribe by regulations other wild animals, or

viable eggs thereof, that are deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interests of agriculture, forestry, or horticulture, or to the welfare and survival of the wildlife or wildlife resources of the United States.

The Asian Carp Prevention and Control Act added the bighead carp to the statutory list. The Service accordingly amends 50 CFR 16.13 to reflect the current list of prohibited wildlife. By adding all forms of live bighead carp (*Hypophthalmichthys nobilis*), gametes, viable eggs, and hybrids thereof to the list of injurious fish, mollusks, and crustaceans in 18 U.S.C. 42 and now in 50 CFR 16.13, their importation into the United States or transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs at the port of entry. In addition, no live bighead carp, gametes, viable eggs, or hybrids thereof acquired under permit may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the Director of the Service. The interstate transportation of any live bighead carp, gametes, viable eggs, or hybrids thereof that currently may be held in the United States for any purpose is prohibited, unless authorized by permit.

In adding bighead carp to the list of injurious fish, we are revising some of the current text in 50 CFR 16.13. These changes are nonsubstantive and for the purposes of creating a consistent format for the list and helping to ensure clarity.

Effective Date

We are making this rule effective upon publication in the **Federal Register**. In accordance with the Administrative Procedure Act (5 U.S.C. 553 (d)(3)), we find good cause to make this rule effective less than 30 days after

publication in the **Federal Register**. With the signing of Public Law 111–307, the listing of bighead carp and the statutory prohibitions on importation into the United States and interstate transport went into effect on December 14, 2010. The Service does not have the authority to delay the effectiveness of the listing or the prohibitions. Therefore, we find good cause to make this rule effective immediately.

Required Determinations

This rulemaking amends the list of prohibited species in 50 CFR 16.13 to accurately reflect the addition made by Public Law 111–307, the Asian Carp Prevention and Control Act, which amends the U.S. Code (18 U.S.C. 42) by adding the bighead carp to its list of injurious animals. To update the Code of Federal Regulations to conform with Public Law 111–307, it is necessary to add this species to the implementing regulations (50 CFR 16.13). The Administrative Procedure Act requires publication of a proposed rule and the opportunity for public comment, except when such notice and comment would be impracticable, unnecessary, or contrary to the public interest. In this situation, public notice and the opportunity to comment are unnecessary because there would be nothing for the public to comment on. The Service does not have the authority to remove or alter either the listing that Congress put in place with Public Law 111–307 or the prohibitions that went into effect on December 14, 2010. The facts of this situation may also meet the “contrary to the public interest” standard under the APA to the extent that publication of a proposed rule would likely mislead the public by implying either that the prohibitions are not yet in effect or that the agency has discretion over whether the species should be listed or discretion over the scope or timing of the prohibitions. This rulemaking involves no discretionary or policy decisionmaking on the part of the Service, but merely amends regulations to reflect a change in statute. As such, neither an economic analysis nor an environmental assessment was required in conjunction with this rulemaking.

Information Collection Requirements

This final rule contains no information collection requirements for which Office of Management and Budget approval is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, 50 CFR part 16 is amended as described below:

PART 16—INJURIOUS WILDLIFE

■ 1. The authority citation for part 16 is revised to read as follows:

Authority: 18 U.S.C. 42.

■ 2. Amend § 16.13(a)(2) as follows:

■ a. In paragraphs (a)(2)(i) through (iii) and paragraph (a)(2)(iv)(BB), by removing the semicolon at the end of the paragraph and adding a period in its place;

■ b. By removing paragraphs (a)(2)(v) and (vi); and

■ c. By adding a new paragraph (a)(2)(v) to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) * * *

(2) * * *

(v) Any live fish, gametes, viable eggs, or hybrids of the following Asian carp species in family Cyprinidae:

(A) *Hypophthalmichthys harmandi* (largescale silver carp).

(B) *Hypophthalmichthys molitrix* (silver carp).

(C) *Hypophthalmichthys nobilis* (bighead carp).

(D) *Mylopharyngodon piceus* (black carp).

* * * * *

Dated: March 4, 2011.

Paul R. Schmidt.

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–6507 Filed 3–21–11; 8:45 am]

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