

FINDING OF NO SIGNIFICANT IMPACT

Listing 10 Freshwater Fish and 1 Crayfish As Injurious Wildlife under the Lacey Act

Background

On October 30, 2015, we published the proposed rule to list the crucian carp (*Carassius carassius*), Eurasian minnow (*Phoxinus phoxinus*), Prussian carp (*Carassius gibelio*), roach (*Rutilus rutilus*), stone moroko (*Pseudorasbora parva*), Nile perch (*Lates niloticus*), Amur sleeper (*Perccottus glenii*), European perch (*Perca fluviatilis*), zander (*Sander lucioperca*), wels catfish (*Silurus glanis*), and common yabby (*Cherax destructor*) as injurious (80 FR 67026) and made available a draft environmental assessment (EA) and a draft economic analysis. We opened a 60-day public comment period on those documents. We have prepared a final rule, a final economic analysis, and a final EA for the 11 species (“Final Environmental Assessment for Listing 10 Freshwater Fish and 1 Crayfish as Injurious Wildlife under the Lacey Act”, August 2016).

This action is to list the crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, wels catfish, and common yabby as injurious species under the Lacey Act (18 U.S.C. 42, as amended; the Act), thereby prohibiting their importation and interstate transportation, with the goal of preventing the accidental or intentional introduction, establishment, and spread of these injurious species into the United States. This action will protect native wildlife, including threatened and endangered species, and wildlife resources. Additionally, this action will protect agriculture (specifically, aquaculture), and prevent economic loss stemming from the introduction of these species. This listing will not prohibit the transportation of these 11 species within a State. None of these 11 species is native to the United States, and except for one species in one lake, none is established in U.S. ecosystems.

The alternatives we considered are based on the proposed rule, as well as peer review of the proposed rule and information and comments received from the public during the public comment period.

Decision

Because we will list only those species that we determine to be injurious, the Service evaluated each of the 11 species individually. We determined each species to be injurious based on its own traits. Based upon my review of all alternatives as set forth in the final EA, I have decided to implement Alternative 2 to list these 11 species as injurious wildlife. This action will prohibit both importation into the United States and interstate transport between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of the listed species. By prohibiting the importation and interstate transportation of the 11 species, Alternative 2 will protect agriculture and wildlife and wildlife resources from negative impacts due to introductions of the 11 species.

Four of these species have been imported in negligible quantities in the last 5 years (25 import events for four species, total declared import value of \$5,789; USFWS 2016 “Final economic analysis”), but they are not in regular trade, and all could potentially be imported into the United States without this rulemaking. The decision to list these 11 nonnative species as injurious will reduce the risk of introduction into the United States and subsequent establishment and spread of these 11 aquatic species in the wild as well as the risk of introduction, establishment, and spread into new localities of the United States through subsequent interstate transport. It will also reduce the likelihood that the one species already present will be introduced, establish, and spread beyond its current location into other natural areas of the United States. All 11 of the species to be listed are likely to survive and become established, are likely to spread if introduced, and are likely to prey upon and compete with native wildlife species. In addition, it will be difficult to prevent, eradicate, manage, or control the spread of these fish and crayfish, and it will be difficult to rehabilitate or recover ecosystems disturbed by any of these species should they become established. This decision provides the opportunity to prevent the 11 species from entering the United States, establishing populations, and spreading.

The Service uses Injurious Wildlife Evaluation Criteria to evaluate each species proposed for listing. We published these criteria in the proposed rule. The Service has determined that listing these species as injurious is necessary to protect the interests of agriculture, wildlife, and wildlife resources of the United States. Therefore, preventing the introduction of an injurious species into the United States or spread of an already introduced injurious wildlife species into a U.S. ecosystem where it has not previously occurred preserves the environmental status quo and cannot have a significant harmful effect on the environment.

Alternatives Considered

In deciding to list these eleven species, I considered three alternatives: Alternative 1, No action; Alternative 2, list as injurious all 11 of the proposed species; and Alternative 3, encourage a voluntary refrain from importing following an existing Memorandum of Understanding (UAFWS 2013).

Alternative 1. This alternative refers to no action being taken to list any of the 11 species as injurious species under the Act and allow importation and interstate transportation of the 11 species, gametes, eggs, and their hybrids. The species are not currently established in the United States (except for one species in one lake) and this alternative would allow for introduction, establishment, and spread. Importers will be able to bring the species into the United States for any purpose. Several of the species are or have been raised for food in commercial aquaculture operations outside of their native ranges. Others have been released into natural water bodies outside of the United States for fishery-related purposes. Several species also serve as aquarium or pond ornamentals. Not only do these species have histories of invasiveness elsewhere in the world, but all have had well-documented adverse effects stemming from introduction, establishment, and spread. These experiences abroad indicate that the threats from these species are not

merely speculative. If these species were introduced, established, and spread in the United States, they could harm native wildlife, including threatened and endangered species, damage wildlife resources, and reduce agricultural (aquaculture) productivity.

Alternative 2. The Service would list all 11 species (crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, wels catfish, and common yabby) as injurious wildlife under the Act, and thus prohibit both the importation and interstate transportation of all 11 species, gametes, viable eggs, or hybrids, except by permit for zoological, educational, medical, or scientific purposes. An injurious wildlife listing would not prohibit the intrastate transport or possession of the 11 species where such activities are not already prohibited by the State.

Although the 11 species are not currently in U.S. ecosystems (except for one species in one lake), rapid screening analyses found that these species were “high risk” for invasiveness considering their high climate match in parts of the United States and history of invasiveness outside of their native ranges elsewhere in the world. The 11 species were evaluated as injurious using the Service’s Injurious Wildlife Evaluation Criteria. The introduction, establishment, and spread of these 11 species would be injurious to the interests of agriculture, wildlife, or the wildlife resources of the United States.

This listing action preserves the environmental status quo. That is, these listings help ensure that any potential effects associated with the introduction of these species do not occur. In this way, injurious wildlife listings maintain the state of the affected environment into the future—the state of the environment prior to listing or potential introduction in the absence of a listing. 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.

Alternative 3. Under this alternative, the Service would not amend the list of injurious wildlife but would encourage the public to voluntarily refrain from importation or interstate transportation of these 11 species. This follows a Memorandum of Understanding (MOU) signed by the Service, Pet Industry Joint Advisory Council, and the Association of Fish and Wildlife Agencies in June 2013 (USFWS 2013a) but is not limited to those parties. 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, 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.

Voluntary cooperation will not have any enforcement provisions or legal restraint on the public, businesses, or members of the organizations. Any person could still import and transport these 11 species. The success or failure of this alternative depends on individuals, organizations, and businesses that may have, or in the future develop, a

commercial interest in any of these species. This alternative would not prevent the importation and interstate transportation of any of these 11 species and would allow for their potential introduction, establishment, and spread. If these species were introduced, established, and spread in the United States, they would be expected to harm native wildlife, including threatened and endangered species, damage wildlife resources, and reduce agriculture productivity.

Public Involvement

On October 30, 2015, the Service published a proposed rule in the *Federal Register* (80 FR 67026) and announced the availability of the draft economic analysis (2015) and the draft EA (2015) of the proposed rule on the 11 species for possible addition to the list of injurious wildlife under the Lacey Act. It also provided a 60-day period to submit public comments. The Service received 20 responses during the public comment period that closed December 29, 2015. We reviewed all comments and information received for substantive issues regarding the injurious nature of each of the 11 species. We received no public comments specifically referring to the EA.

We received comments from State agencies, regional and U.S.–Canada governmental alliances, commercial businesses, conservation organizations, nongovernmental organizations, industry associations, and private citizens. One comment came from Zambia and two were anonymous. Comments received provided a range of opinions on the proposed listing: (1) unequivocal support for the listing with no additional information included; (2) unequivocal support for the listing with additional information provided; (3) equivocal support for the listing with or without additional information included; and (4) unequivocal opposition to the listing with additional information included. One comment was about an unrelated subject and beyond the scope of this rulemaking.

We received public comments specifically on the rule, but no comments specifically addressing the environmental assessment or the economic analysis. A summary of the public comments and our responses is presented in the final rule.

Peer review

Concurrent with the public comment period, we solicited expert opinion on information contained in the October 30, 2015 (80 FR 67026), proposed rule for 11 species and supporting documents from knowledgeable individuals selected from specialists in the relevant taxonomic group and ecologists with scientific expertise that includes familiarity with one or more of the disciplines of invasive species biology, invasive species risk assessment, aquatic species biology, aquaculture, and fisheries.

We received responses from the three peer reviewers we solicited. We reviewed all comments for substantive issues and any new information they provided. We consolidated comments and our responses into key issues in the “**Comments Received on the Proposed Rule**” section. We provided comments and responses specifically

regarding the environmental assessment at the end of the Final Environmental Assessment. We revised the final rule, economic analysis, and environmental assessment to reflect peer reviewer comments and new scientific information where appropriate. None of the peer or public comments necessitated any substantive changes to the rule, the environmental assessment, or the economic assessment.

Finding of No Significant Impact

Based upon an evaluation of the information contained in the Final Environmental Assessment and supporting references, it is my determination that the listing of the crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, wels catfish, and common yabby as injurious wildlife does not constitute a major Federal action significantly affecting the quality of the human environment, considering the context and intensity of impacts, under the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4332, as amended). Thus, an environmental impact statement will not be prepared. The environmental assessment with supporting information is available at www.regulations.gov or <http://www.fws.gov/injuriouswildlife/11-freshwater-species.html>.

This determination also considered the following factors:

1. There will be no significant ecological impacts. No adverse direct, indirect, or cumulative impacts to habitats will result from listing these 11 nonnative species as injurious wildlife.
2. There will be no significant adverse impacts to native species. No impacts to native species will result from listing these 11 species as injurious wildlife because this is a preventative action to reduce the risk from the introduction of these fish and crayfish into natural or wild areas of the United States through importation or interstate transport.
3. There will be no significant effects on public health and safety. No significant direct, indirect, or cumulative impacts result from these species being prohibited from importation and interstate transport.
4. The effects on the quality of the human environment are not likely to be controversial.
5. The action will not establish a precedent for future actions with significant effects nor does it represent a decision in principle about a future consideration.
6. The cumulative impacts of listing these 11 species in order to protect native species are not significant.

7. The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
8. The action will not violate Federal, State, and local laws or requirements for the protection of the environment.
9. The action will not significantly affect any site listed in, or eligible for listing in the National Register of Historic Places, nor will this action cause losses or destruction of significant scientific, cultural, or historic resources.
10. The action does not involve highly uncertain, unique, or unknown environmental risks to the human environment.
11. Both beneficial and adverse effects have been considered and this action will not have a significant effect on the human environment.
12. The project will not significantly affect any unique characteristics of the geographic area such as proximity to historical or cultural resources, wild or scenic rivers, or ecologically critical areas.

Findings Required by Other Laws and Regulations

This decision to designate live specimens, gametes, viable eggs, or hybrids of crucian carp, Eurasian minnow, Prussian carp, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, wels catfish, and common yabby as injurious wildlife under the Lacey Act is consistent with the intent of the Lacey Act, which is to protect humans, the welfare and survival of wildlife and wildlife resources and the interests of agriculture, horticulture or forestry from actual and potential negative impacts from such species by preventing their importation and interstate transport.

References

- USFWS. 2013a. 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.
- USFWS. 2015. Draft economic analysis for listing of 10 freshwater fish and 1 crayfish species as injurious under the Lacey Act. US Fish and Wildlife Service, Falls Church, VA. 19 pp.

USFWS. 2015. Draft environmental assessment for listing 11 freshwater species as injurious under the Lacey Act. US Fish and Wildlife, Falls Church, VA. 34 pp.

USFWS. 2016. Final economic analysis for listing of 10 freshwater fish and 1 crayfish species as injurious under the Lacey Act. US Fish and Wildlife Service, Falls Church, VA.

USFWS. 2016. Final environmental assessment for listing 11 freshwater species as injurious under the Lacey Act. US Fish and Wildlife, Falls Church, VA.

Approved by:

/s/Stephen Guertin

Director, U.S. Fish and Wildlife Service

9/12/2016

Date