



Frequently Asked Questions

Categorical Exclusion for Listing Species as Injurious Wildlife

October 29, 2015

Q1. What action is the U.S. Fish and Wildlife Service announcing?

A1. The U.S. Fish and Wildlife Service (Service) is adding a categorical exclusion (CE) under the National Environmental Policy Act (NEPA) that the Service can opt to use in the process of listing species as “injurious wildlife” under the Lacey Act. The new CE will be effective (that is, available for the Service to use in future listing rules) as of the date of publication in the *Federal Register* (October 29, 2015). The final *Federal Register* notice can be found here:

<http://www.fws.gov/policy/library/2015/2015-27360.pdf>

Q2: What is a categorical exclusion?

A2: A categorical exclusion is a class of actions under NEPA (42 U.S.C. 4321) that allows federal agencies to bypass preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for actions that typically do not have a significant impact on the human environment.

Under NEPA, federal agencies are required to consider the potential environmental impact of their actions prior to implementation. Agencies are then generally required to prepare either an EA or EIS prior to moving forward with environmental review. However, when a federal agency identifies actions that do not normally have a significant environmental impact, the agency can work with the Council on Environmental Quality (CEQ), which oversees NEPA, to establish a categorical exclusion to bypass that step. CEQ must approve any new CEs.

Regardless of the categorical exclusion, the Service must still evaluate whether the species is injurious—that is, poses a threat in the wild to native wildlife, humans, or certain other resources (see below).

Q3: Why did the U.S. Fish and Wildlife Service seek a categorical exclusion?

A3: The Service recognizes that the current process of listing species as injurious under the Lacey Act 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 the U.S. Therefore, the Service sought 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. 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 a more resource-intensive EA or EIS. The Service coordinated with the Department of the Interior’s Office of Environmental Policy and Compliance (OEPC) and CEQ, and determined that an EA or EIS is generally not needed for the action of listing species as injurious.

Q4: What exactly is this categorical exclusion for?

A4: The Service can use the categorical exclusion under certain circumstances when evaluating a species proposed for being added to the Injurious Wildlife List under the Lacey Act. The categorical exclusion will be added to the Department of the Interior's Department Manual as: "The adding of species to the list of injurious wildlife regulated under the Lacey Act . . . which prohibits the importation into the United States and interstate transportation of wildlife found to be injurious."

For each listing determination, the Service must still meet requirements of all applicable statutes, executive orders and regulations, and we will still evaluate each species for injuriousness. This means that we will still prepare the evaluation of the species as injurious and an economic analysis, but we may not need to prepare an EA or EIS.

Q5: What does injurious wildlife mean?

A5: Injurious wildlife are wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles, and their offspring or eggs that are harmful to human beings, or to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. Species on this list are prohibited from being imported into the United States or being transported across state borders without a permit. These prohibitions prevent harmful, nonnative species from being introduced into the United States or from spreading across the country.

Permits may be granted for the importation or transportation of live specimens of injurious wildlife and their offspring or eggs for scientific, medical, educational, or zoological purposes. An injurious wildlife listing would not prohibit intrastate transport or possession of that species within a state where those activities are not prohibited by state law.

More information about injurious wildlife can be found here:

<http://www.fws.gov/injuriouswildlife>.

Q6: How was the categorical exclusion justified?

A6: The Service provided three justifications: the categorical exclusion is consistent with NEPA and CEQ regulations. In addition, all of the previous environmental assessments that the Service has prepared show that injurious wildlife listings have no significant impact on the human and natural environment. Finally, the nature of injurious wildlife listings is to *prevent* potential future actions from occurring as the result of the introduction of a species and the associated effects of those introductions on the human environment. These listings ensure that certain potential effects associated with introduction of the species *do not* occur and thus maintain the environmental status quo into the future. Please see the Service's "[Substantiation for Establishing a Categorical Exclusion for the Listing of Injurious Wildlife Under the Lacey Act](#)" for more information.

Q7: What doesn't the categorical exclusion cover?

A7: The categorical exclusion covers only the process of listing a species as injurious. It does not cover control actions (such as constructing barriers) or eradication actions (such as applying pesticides) for invasive or injurious species, the issuance of permits for injurious species, or the removal of species from the injurious wildlife list. Additionally, the categorical exclusion is subject to a review of "extraordinary circumstances" established by the Department of the Interior (see 50 CFR 46.215). Such a review may trigger the need to prepare an EA or EIS despite the existence of the CE.

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.

Q8: Will all future injurious wildlife listings be categorically excluded?

A8: Not necessarily. The Service must still review each listing action for extraordinary circumstances. See also A7 above.

If a review of the extraordinary circumstances discloses no potential significant environmental impacts, the agency may apply the categorical exclusion and proceed with its action. If extraordinary circumstances are found, the Service is required to proceed with the full environmental review process under NEPA. You can find the list of extraordinary circumstances at http://www.fws.gov/habitatconservation/DOI_Extraordinary_Circumstances.pdf.

Q9: Where can I find more information on this categorical exclusion?

A9: You can find the *Federal Register* notice and other information on this categorical exclusion at <http://www.fws.gov/injuriouswildlife/catex.html>. You can find the final general guidance for categorical exclusions generated by CEQ at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-06/pdf/2010-30017.pdf>

Q10: Were public comments considered for the proposal?

A10: Yes, the Service published a notice in the *Federal Register* on July 1, 2013, announcing the proposal and opening a 30-day public comment period. The Service subsequently provided an additional 60-day and 30-day public comment period for a combined 120 days and received more than 5,000 comments. A summary of these comments is provided in the final notice that published in the *Federal Register*.

Q11: What steps did the Service take for preparing and receiving approval for a categorical exclusion?

A11: The Service:

1. Drafted the proposed categorical exclusion based on the agency's experience and substantiating information;
2. Consulted with CEQ on the proposed categorical exclusion;
3. Published the proposed notice of the categorical exclusion in the *Federal Register* ([78 FR 39307](#); July 1, 2013);
4. Reviewed and addressed the public comments;

5. Consulted 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;
6. Received CEQ's written determination of conformity (September 25, 2015);
7. Published the final categorical exclusion in the *Federal Register*;
8. Filed the categorical exclusion with CEQ; and
9. Made the categorical exclusion readily available to the public on the agency's website (<http://www.fws.gov/injuriouswildlife/catex.html>).

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>

Q12: Has the Service received CEQ's written determination of conformity with NEPA and the CEQ regulations?

A12: Yes, the Service received a letter of conformity from CEQ on September 25, 2015. The letter of conformance can be found at:

http://www.fws.gov/injuriouswildlife/pdf_files/CEQ-Conformity-Letter-Lacy-Act-Listing-Injurious-25Sep15.pdf

Q13: Where are the Service's categorical exclusions found?

A13: The Service's categorical exclusions are found in the Department of the Interior's Department Manual. You can find the categorical exclusions in chapter 8.5 of the Department Manual <http://elips.doi.gov/ELIPS/DocView.aspx?id=1739>. Please note that the new categorical exclusion may not be added to the manual until other revisions are made. When it is added, it will appear as a change to the Department Manual at 516 DM 8.5 C (9). Regardless of when the Department Manual is updated, the new categorical exclusion will be effective as of the date of publication of the final notice in the *Federal Register*.