National Environmental Coalition on Invasive Species

Center for Food Safety, National Wildlife Federation
The Nature Conservancy–Florida Chapter, The Wildlife Society

Jan. 14, 2014

Dan Ashe, Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C St NW
Washington, DC 20240

Re: "voluntary" injurious species listing approach and related matters

Dear Director Ashe,

The above-listed member groups in the National Environmental Coalition on Invasive Species recognize and support your agency's recent policy efforts in the area of Lacey Act injurious species listings, including several important regulatory proposals submitted to the Office of Management and Budget (OMB). We do have comments about these proposals as well as the ongoing "voluntary" injurious animal listing approach. It is timely to forward these comments to you and your staff now.[1]

Voluntary listing process: The Service has created an important new webpage that has not received much attention, but that signals a small step towards a more rapid risk screening approach: *Invasive Species Prevention: Keeping Risky Aquatic Species Out of the United States – How We are Working with Industry and State Partners*.[2] The webpage describes a "voluntary" listing approach for aquatic species that are not "in trade". It provides links to Ecological Risk Screening Summaries (ERSS) for eleven fish and one crayfish species the Service describes as "high risk". The process described on the webpage is pursuant to the Memorandum of Understanding (MOU) with the Pet Industry Joint Advisory Council and other stakeholders.

Our concern is that the MOU terms in combination with the statements on the webpage suggest the regulated industries are driving the priorities of the Service as it proceeds with implementation of this novel approach. One example of this is that the voluntary listing is only of species that are not considered to "in trade," yet there is no definition or description of what the term means. It appears that the Service is deferring to an agreement with the industry regarding when species are considered to be "in trade" and that is determining the work priorities of the Service under the MOU. We urge the Service to define that term in as much detail as possible, as many factors (historical, quantitative, financial, geographic presence/absence) may need to be taken into account in determining whether U.S. trade in a species exists or not.

[1] We will plan to submit formal comments on the pending regulatory proposals when public comment dockets are open.
[2] www.fws.gov/injuriouswildlife/Injurious_prevention.html .

One way the Service can counter this appearance of influence by the regulated industry is by truly engaging the public and a broad suite of other stakeholders outside the regulated industries. To do this, we urge the Service to publish a Notice in the Federal Register seeking comments on the ERSS species list and the risk assessment process, as well as comments on the voluntary listing approach and the MOU. The only "notice" about these processes so far has been informal and *ad hoc.* The webpage provides a special email address for such comments (prevent_invasives@fws.gov), on the eleven fish and one crayfish proposed for involuntary listing, however, the general public has had no notice of this opportunity or email address. Our organizations follow "injurious species issues" closely and we did not learn of the existence of this comment opportunity on the voluntary listing proposals until months after the page was posted online. Standard Federal public notice and comment practice requires a Federal Register notice instead of informal, unannounced, webpage postings.

We offer these four comments on the "Standard Operating Procedures" (SOP) posted on the webpage as the basis for conducting the risk screenings:

1) In general the SOP is helpful and we commend your staff for undertaking it; we recognize the screenings represent many years of Service effort.
2) We do have some specific critiques:
    a. The SOP characterization of "high risk" (pp. 6-7) includes the element: "*Documented history of invasiveness. Scientific evidence is credible and substantial."* These criteria are too limiting. There are species that should, based on their traits, be considered high risk according to scientifically-accepted predictive models, but that do no not yet have a "history" of invasiveness (as they may not have been introduced anywhere else yet). To be proactive and precautionary, those species are ones the Service should also seek to keep from being introduced in the United States, not only species that already have a "history" of invading elsewhere. The SOP should be changed to also include as an element of the "high risk" description, "species with a reasonable, credible scientific prediction that they may become invasive in the United States."
3) Similarly, the definition of "low risk" is problematic, as it includes the presumption that a species' presence in an area for ten years or after a period of substantial trade, without documentation of harm, indicates a low risk. Repeated experience with "lag times" of invasions indicates ten years is in some case not enough time to presume a species will never invade. An example in Florida is the African jewelfish (*Hemichromis letourneuxi*), which was first documented in 1959 but for a long time was only observed in canals and at low abundance. Over decades, this fish spread in canals on the east and west coasts of Florida; however, due to its observed low abundance many thought the species would not become a problem. Then, the fish reached Everglades National Park and its population exploded, resulting in a serious environmental impact that could have been prevented.

4) We are concerned the SOP is overly focused on aquatic species, in particular those that may impact the Great Lakes. The Service should devote equivalent efforts to comprehensive risk screening for terrestrial species and aquatic species that threaten other areas beyond the Great Lakes.
5) The SOP considers wildlife disease as an element of risk, but only for "OIE reportable" diseases (p. 2). Limiting the consideration to diseases OIE has already formally recognized is not precautionary, as there may be emerging disease concerns that are very important and are documented in reliable sources, but are not yet "OIE reportable". The SOP should allow broader consideration of disease risk.

We have stated before we see some potential benefits from the voluntary listing approach but are concerned that the process in the MOU has consumed, and is consuming, valuable staff time that could be better spent improving the regulatory listing process. Further, there are risks of the voluntary process creating a "niche market" among non-complying industry members, not party to the MOU, who do not agree with its purely voluntary restrictions. Past experience with voluntary "do not sell" lists for nursery plant species shows they have in some cases had the opposite of their intended effects.

Our prior comments on the draft MOU indicated the need for a clear process to move from "voluntarily listing" of a species to a "regulatory listing" of the same species. When it moves to a regulatory listing, we urge the Service to use an improved risk screening approach taking into account our critiques of the current SOPs expressed above. The MOU/voluntary listing approach and criteria should not be simply shifted over into becoming the approach and criteria used for regulatory listings. The Service should prioritize its future listing work according to the overall degree of risk presented to the nation, including species that are "in trade".

OTHER MATTERS

Listing the eleven pending species: We support the Service's proposal to further evaluate and then list the ten "high risk" fish and one crayfish under the Lacey Act (OMB RIN: 1018-AY69, Notice of Proposed Rule Making, Target Date: January 2014).

Listing the Five constrictor snakes: We reiterate our support for the Service's announced intent to finalize its listing proposal for large constrictor snake species, first published in the Federal Register back in March, 2010, as far as the five still unregulated large constrictor species (OMB RIN: 1018-AV68, Final Rule; Target Date: February 2014). All five species clearly qualify under the Lacey Act injurious species criteria, as the Service's and U.S. Geological Survey analyses have thoroughly documented. The ecological and human safety risks from the delay in listing those five species continue unabated, more than three and one-half years after the date of the Service's Proposed Rule.

More rapid listings generally: We support the Service's proposal to adopt a more rapid, efficient and effective listing approach (OMB RIN: 1018-AX63, Final Rule; Target Date: March

2014). We support a process by which many listings are proposed at one time, relying on the ERSSs, then public comment is taken and they are moved relatively rapidly through the regulatory listing process. A positive model to follow is USDA's APHIS new regulation that applies to nursery plant imports that created the precautionary category known as "not authorized pending pest risk analysis" (NAPPRA). With APHIS showing that the approach of proposing dozens of species listings *en masse* can work, the Service is in a position now to promptly also follow that approach.

Listing Quagga mussels: We understand the Service has refrained from the non-controversial proposal to list Quagga mussels over concerns of delay and resources. Nevertheless, a broad Quagga mussels listing is needed as there is no indication that Congress will be able to timely pass a bill listing it by statute. NECIS is on record supporting the listing and we urge the Service to make prompt progress toward it.

Adopting NEPA Categorical Exclusion: Finally, we reiterate our support for the Service's proposal for a NEPA Categorical Exclusion (CatEx) notice, for its Lacey Act injurious species listing process (published in the Federal Register on July 1, 2013). While our groups general disfavor NEPA CatEx.s (and some of us have a history of opposing them in some other contexts), in this case it makes sense. Prohibiting an injurious species plainly is a positive environmental benefit, virtually by definition. Thus, preparing a NEPA EA for injurious species listings is redundant. We strongly favor this CatEx; it will save wasted time and resources and the Service should finalize it promptly.

We will look forward to further meetings with you and, as appropriate, with OMB officials to discuss these matters. For further information please contact: Peter T. Jenkins, tel: 301.500.4383 email: jenkinsbiopolicy@gmail.com.

Sincerely,

/s/

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