



February 28, 2025

Kristen Sommers
Injurious Wildlife Listing Coordinator
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803.

Re: Injurious Wildlife Species - Listing Salamanders Due to Risk of Salamander Chytrid Fungus
Docket Number: FWS-HQ-FAC-2015-0005

Dear Ms. Sommers:

Please accept and act favorably upon the following request and comments by the National Aquaculture Association¹ relative to the authority provided by Congress to designate and then regulate *native* animals or animals potentially susceptible to a *pathogen* as Injurious Wildlife Species.

We request our letter and the Federal Register Notice published in Volume 90, Number 6, pages 2170-2215, concerning two interim rules listing nonnative and native salamanders due to risk of salamander chytrid fungus be referred to the Secretary of the Interior and the agency's Department of Governmental Efficiency Team Leader for review, in coordination with the Director of the Office of Management and Budget. In conformance with Executive Order 14219, [Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative](#) directing federal agencies to identify:

- "...regulations that are based on unlawful delegations of legislative power..."
- "...regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition..."
- "...regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority..."
- "...regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship."

The two interim rules described in the Federal Register Notice qualify for the four categories identified.

¹ The [National Aquaculture Association](#) (NAA) is a U.S. producer-based, non-profit trade association founded in 1991 that supports the establishment of governmental programs that further the common interest of our membership, both as individual producers and as members of the aquaculture community. For over 34 years NAA has been the united voice of the domestic aquaculture sector committed to the continued growth of our industry, working with state and federal governments to create a business climate conducive to our success, and fostering cost-effective environmental stewardship and sustainability.

Congress Did Not Authorize the Listing of Native Species as Injurious Wildlife

The Lacey Act was signed into law on May 25, 1900 “...to prohibit the transportation by interstate commerce of game killed in violation of local laws and other purposes (Secretary of State 1927:187).” Those other purposes included making it “...unlawful for any person or person to import into the United States any foreign wild animal or bird except under special permit from the United States Department of Agriculture...(page 188).” The original Act identified specific foreign animals that could not be imported (i.e., mongoose, fruit bats, English sparrow and starling) “...or other birds or animals as the Secretary of Agriculture may from time to time declare injurious to the interest of agriculture or horticulture (page 188).”

The Lacey Act, as implemented by Congress and the federal agencies until 2016, resulted in an injurious wildlife list consisting of 92 mammals, 6+ birds, 131 fish, 1 mollusk, 3 crustaceans, and 239+ snake species that are not native to the United States. From its initiation, the Lacey Act, and its implementation, has been solely focused upon foreign species, first by the U.S. Department of Agriculture and then by the Department of Interior, U.S. Fish and Wildlife Service.

The U.S. Code pertinent to this authority is found in Title 18 – Crimes and Criminal Procedures, Part I – Crimes, Chapter 3 – Animals, Birds, Fish and Plants, Sec. 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations.

Granted the plain reading of Section 42 does not include adjectives, like “foreign,” that appeared in the original Act which would limit animals subject to the law to those from outside the United States. The removal of this key adjective, foreign, occurred in 1948.

A bill entitled “Prohibiting the Transportation of Wild Animals and Birds under Inhumane or Unhealthy Conditions” (S. 1447), was introduced to the Senate to amend the Lacey Act. The purpose of the bill was to prevent future horrific events involving animals shipped in open cages by ship and described to the Senate Committee on Interstate and Foreign Commerce where the bill was first heard on June 16, 1947. The Committee acted favorably to amendments proposed to Title 18, Section 391 to achieve that objective.

However, in the course of making those changes the Department of Interior was consulted and a sentence that included the word “foreign” was deleted from the law. This sentence concerned a required permit that the Department deemed of “...little beneficial effect in connection with the enforcement of the general purposes of the section.” This sentence read, “No person shall import into the United States or into any Territory or District thereof any foreign wild animal or birds, except under special permit from the Secretary of Interior.” The Section number was also changed to 241.

The proposed changes to this section, which is strikingly similar to current law, were:

Sec. 241. (a)The importation into the United States or any Territory or District thereof, of the mongoose, the so-called "flying foxes" or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of the Interior may from time to time declare to be injurious to the interests of agriculture or horticulture is hereby prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. ~~No person shall import into the United States or into any Territory or District thereof any foreign wild animal or birds, except under special permit from the Secretary of Interior.~~ Nothing in this ~~section~~ subsection shall restrict the importation of natural-history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of the Interior may designate. The Secretary of the Treasury is hereby authorized to make regulations for carrying into effect the provisions of this ~~section-subsection~~ subsection and....”

The House and Senate committee testimonies, Congressional Record Index and the Congressional Record for House and Senate for the 80th Congress, Second Session, identified S. 1447 as being “An act to prohibit the importation of foreign wild animals and birds under conditions other than humane, and for other purposes.” The legislative history of the bill was:

- The Senate, June 10, 1948 considered S. 1447. The Congressional Record for that date includes the original language and the proposed language. The changes were agreed and passed.
- The House debated the bill, agreed, passed and then tabled it. Subsequently it was passed by the House without changes.
- The President signed the bill into law on June 29, 1948.
- Public Law 818 codified the changes noting in both the title and marginal note that the objective was to prohibit importation of foreign wild animals and birds under conditions other than humane, and other purposes.

The Lacey Act has been subjected to considerable scrutiny subsequent to 1948. A variety of peer-reviewed and grey literature publications have appeared and in no instance did these authors construe Lacey Act provisions to authorize the listing of native animals as injurious (Dentler 1993, U.S. Congress 1993, Anderson 1995, Whalen 1998, Biber 1999, and Jenkins et al. 2007).

Notably, the U.S. Congress, Office of Technology Assessment, recommended in 1993 (emphasis added):

Congress could provide the FWS [U.S. Fish and Wildlife Service] with increased guidance on the purpose of this [injurious] list and the specific criteria for adding species to it. Proposed amended criteria would be discussed with outside experts and be as comprehensive as possible. **One possibility would be to include harmful species indigenous to the United States, but established outside their range, as injurious** (page 23).

Alexander (2013), Legislative Attorney with the Congressional Research Service, produced an in-depth analysis of injurious species listings under the Lacey Act for the Congress and nowhere in her analysis did she mention the possibility that native species could be listed.

In summary, the consistency in language between the original Act and the statute of today is remarkable. It is clear that the purpose and intent of the Lacey Act, as expressed in 1900 and throughout subsequent amendments, is to focus federal agency regulatory action upon the importation of foreign animal species. At no time has the Lacey Act been further modified to authorize listing of native animals as injurious wildlife. In no instance have knowledgeable citizens, or Congressional offices that have analyzed the Lacey Act, interpreted the Act to authorize the inclusion of native animals as injurious wildlife. The Service appears to have exceeded its authority and the intent of Congress by implementing the 2016 interim rule and this second interim rule.

Congress Did Not Authorize Listing Injurious Wildlife Based Upon Pathogens

Throughout the history of the Lacey Act and subsequent listing of species as Injurious Wildlife up until 2016, assessing the environmental, human and economic risks has focused on species biological activity (predation; habitat, crop or structural damage; attacks on people). Listing a species, native or foreign, based upon a pathogen invites listings unintended by Congress. As examples, current agency interpretation should trigger Injurious Wildlife listings for animal zoonotic and non-zoonotic pathogens:

- Birds for avian influenza, *Chlamydia psittaci*, salmonellosis, cryptococcosis, histoplasmosis, and cryptosporidiosis.
- Bison and elk for brucellosis.
- Deer for tuberculosis and brucellosis, Q fever, and leptospirosis.
- Squirrels for hantavirus, leptospirosis, ringworm, salmonella, Lyme disease, and tularemia.
- Raccoons, skunks, squirrels, bats, foxes, dogs, cats, horses and rabbits for rabies.
- Pigs for African swine fever, leptospirosis, toxoplasmosis, brucellosis, tularemia, trichinellosis, swine influenza, salmonella, hepatitis, pathogenic strains of *Escherichia coli*, and pseudorabies.
- Cattle for ringworm, Q fever, chlamydiosis, leptospirosis, campylobacteriosis, salmonellosis, listeriosis, yersiniosis, cryptosporidiosis, pathogenic *E. coli*, *Mycobacterium paratuberculosis*, campylobacteriosis, MRSA, rabies, and anthrax.

We suggest that an alternative approach be explored and adopted to take advantage of Congressional authorities and governmental efficiencies to prevent the introduction of animal pathogens to the United States by collaborating with the U.S. Department of Agriculture (USDA).

Preventing the movement of animals for their potential transport infectious pathogens is a Congressionally authorized activity of the USDA. In that role the agency is the competent authority for the United States to the World Organization for Animal Health (WOAH). This organization monitors the emergence and development of animal diseases in terrestrial and aquatic animals, either domestic or wild, to trigger actions by member nations before the diseases imperil animal health and welfare, public health or livelihoods.

The pathogen, *Batrachochytrium salamandrivoran*, is included in the WOAH Aquatic Code: [Aquatic Code Online Access - WOAH - World Organisation for Animal Health](#). We recommend the FWS formally request: 1) the USDA to declare the United States free of this pathogen and 2) the agency implement import controls. As a significant consequence, time and effort and significant efficiencies could be realized for the FWS. In addition, the public, who may be misled by a pathogen centric implementation of the Lacey Act, would be directed to an agency with a specific and authorized role to prevent animal pathogen entry.

We also request with this recognition that pathogens, which are inappropriately regulated under the Lacey Act, be removed from the Code of Federal Regulations of 50 CFR 16.13 (3) and (4). These regulations concern pathogen certification for imported live or dead unviscerated salmonid fish (family Salmonidae), live fertilized eggs, or gametes of salmonid fish. The regulations implement a 1960's era request by the U.S. aquaculture community when USDA was not the recognized competent authority. The situation has changed significantly and USDA is now the recognised competent authority. The existing regulations conflict with current WOAH standards, create conflict and confusion with valued trading partners predicated on which agency (Interior or Agriculture) is the lead, and inefficiently serve the purposes of protecting wild or farm-raised salmon.

We request the U.S. Fish and Wildlife Service include in their response to public comments a thorough and objective analyses of:

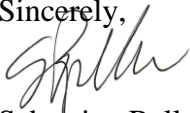
1. Why Congress has not granted the authority under the Lacey Act to regulate native animal species nor the rationale to regulate animal species for susceptible pathogens. This analysis to include examining and summarizing the Congressional Records for:
 - The history of action and intent associated with “Prohibiting the Transportation of Wild Animals and Birds under Inhumane or Unhealthy Conditions” (S. 1447).
 - Congressional action to create and amend the Lacey Act that does not include mention of pathogens as a regulatory rationale.

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2. If the FWS is confident they possess the authority to list native and foreign species because a pathogen risk, then explain to the public why FWS has not proposed a wide variety of animal pathogens known to cause disease or death of far greater risk than *Batrachochytrium salamandrivoran* to wild and domesticated animals and humans.

If you should have questions or need additional information, please do not hesitate to contact us.

Sincerely,



Sebastian Belle
President

cc: David Miko, Assistant Director, Fish and Aquatic Conservation
Dr. Michael Watson, Administrator, Animal and Plant Health Inspection Service

References

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