

# Deregulation suggestions

If you have ideas for cutting existing rules or regulations, we want to hear from you.

A red asterisk (\* (required)) indicates a required field.

Which agency/agencies promulgated the regulation? \* (required)

U.S. Fish and Wildlife Service

98 characters left

Which title, parts, and/or sections of the Code of Federal Regulations (C.F.R.) should be rescinded? \* (required)

Please include the relevant CFR section(s) and the Federal Register citation for the final rule. If you are proposing a repeal of a particular rulemaking, it should note the relevant portions of the C.F.R. that are implicated.

Title 50, Chapter I, Subchapter B, Part 16, Subpart B, § 16.14(a) and (b) Importation of live or dead amphibians or their eggs.

What is your name?

Only answer if you would like the rescission to be named after you or your organization. Providing your name does not guarantee that it will appear on any final agency action, and we reserve the right to refrain from using names that are inappropriate or offensive.

National Aquaculture Association

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Is your proposed rescission a notice of proposed rulemaking, final rule, direct final rule, interim final rule, or interpretive rule? \* (required)

A notice of proposed rulemaking is appropriate where the rescission is likely to be controversial and where the agency has not yet proposed rescinding the rule. (You may submit a final rule at a later time). A final rule is appropriate where the agency has already issued a proposal to rescind the regulation. A direct final rule is appropriate where the rescission is unlikely to be controversial and where the agency has not yet proposed rescinding the rule. An interim final rule is appropriate where there is good cause for the effective date of the rescission to be immediate and where the agency has not yet proposed rescinding the rule. An interpretive rule explains a regulation or the meaning of a statute the agency administers.

Notice of Proposed Rulemaking

Final Rule

Direct Final Rule

Interim Final Rule

Interpretive Rule

What is the name of the regulation being rescinded, if applicable? \* (required)

This could be the name of the part of the C.F.R. or the name of a previous rulemaking.

§ 16.14(a) and (b) Importation of live or dead amphibians or their eggs: Rescinding the Injurious Wildlife listing of native species

Please provide a short summary of the justifications for the rescission. \* (required)

**B** **I** **U** **≡** **≡**

Congress did not authorize the listing of U.S. native species as Injurious wildlife and Congress did not intend that a pathogen(s) be one of the rationales for listing foreign and native species as

Give Feedback

## Injurious Wildlife.

Please insert the address of the agency. [NPRM, DFR, and IFR only]

This information can be found on the most recent agency notice of proposed rulemaking, direct final rule, or interim final rule.

U.S. Fish and Wildlife Service, Branch of Aquatic Invasive Species; MS: FAC; 5275 Leesburg Pike; Falls Church, VA 22041-380

Please insert the contact information for the agency. \* (required)

This information can be found on the most recent agency rulemaking.

Kristen Sommers, Injurious Wildlife Listing Coordinator

What is the background for the regulation being rescinded? \* (required)

You should discuss the current state of the regulation, how it operates, and its history. A high level of detail is preferred.

**B I U**  

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.

Secretary of State. 1927. The Statutes at Large of the United States of America from December, 1925, to March, 1927. U.S. Government Printing Office, Washington, DC.

Explain the reasons for the rescission. \* (required)

This is the analysis part of the rule. You should provide as much detail as possible. Possible reasons for rescission include, but are not limited to: (1) the regulation is inconsistent with a statute; (2) the regulation is inconsistent with the Constitution; (3) the regulation's costs outweigh its benefits; (4) the regulation no longer reflects the current state of technology; or (5) the regulation is bad policy, unreasoned, or unsound. If this is a final rule, you should respond to any relevant and timely comments. If there are other requirements for repealing a rule, please address those here.

**B I U**  

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

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 and...."

The House and Senate committee testimonies, Congressional Record Index and the Congressional Record for House and Senate for the 80<sup>th</sup> 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 WOA Aquatic Code: [Aquatic Code Online Access - WOA - World Organisation for Animal Health](https://www.woah.org/en/what-we-do/standards/codes-and-manuals/aquatic-code-online-access/?id=169&L=1&htmlfile=chaptre_batrachochytrium_salamandrivorans.htm) ([https://www.woah.org/en/what-we-do/standards/codes-and-manuals/aquatic-code-online-access/?id=169&L=1&htmlfile=chaptre\\_batrachochytrium\\_salamandrivorans.htm](https://www.woah.org/en/what-we-do/standards/codes-and-manuals/aquatic-code-online-access/?id=169&L=1&htmlfile=chaptre_batrachochytrium_salamandrivorans.htm)). 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.

Alexander, K. 2013. Injurious species listings under the Lacey Act: A legal briefing. Congressional Research Service. CRS Report 7-5700.

Anderson, R.S. 1995. The Lacey Act: America's premier weapon in the fight against unlawful wildlife trafficking. Public Land and Resources Law Review. 16(27): 27-85.

Biber, E. 1999. Exploring regulatory options for controlling the introduction of non-indigenous species into the United States. Virginia Environmental Law Journal. 18: 375-465.

Dentler, J.L. 1993. Noah's Farce: The regulation and control of exotic fish and wildlife. University of Puget Sound Law Review. 17(191): 191-242.

Jenkins, P.T., K. Genovese and H. Ruffler. 2007. Broken Screens: The regulation of live animal imports in the United States. Defenders of Wildlife. Washington, DC.

U.S. Congress. 1993. Harmful Non-Indigenous Species in the United States. Office of Technology Assessment, OTA-F-565. U.S. Government Printing Office, Washington, DC.

Whalen, D.M. 1998. The control of aquatic nuisance nonindigenous species. Environmental Law. 5: 65-127.

Describe the text of the relevant C.F.R. provisions as it will exist after the rescission. \* (required)  
This is usually contained in the List of Subjects section of a regulation.

**B I U**  

The FWS has listed 36 genera of foreign and native salamanders within 50 CFR 16.14(a). If the decision is the agency was not authorized by Congress to list native species as Injurious Wildlife, then the agency would have to list each foreign salamander. If the decision also includes the agency was not authorized to list species because of a pathogen, then 50 CFR 16.14(a) would be removed in its entirety.

Please insert the name of the current agency head. \* (required)

Paul Souza

Please insert the title of the agency head. \* (required)

Regional Director, Pacific Southwest Region, exercising the delegated authority of the Director, U.S. Fish & Wildlife Service.

By clicking Agree and Continue, I consent to the government using all or part of my submission in future rulemakings or other governmental activities as it sees fit. I am submitting my proposal gratuitously, with no expectation of payment or other consideration, and I waive any future claims against the government related to its use of my submission. I also understand that any material submitted via this portal may be publicly available, and I agree not to submit confidential, copyrighted, trade secret, or personal information. \* (required)

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