

**Testimony of Peter T. Jenkins
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**United States House of Representatives
Natural Resources Committee, Subcommittee on Fisheries, Wildlife, Oceans
and Insular Affairs**

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Chairman Fleming, Ranking Member Sablan, members of the Subcommittee, thank you for the opportunity to testify on *The Department of the Interior's proposal to use a Categorical Exclusion under the National Environmental Policy Act (NEPA) for adding species to the Lacey Act's list of injurious wildlife.*

I am testifying as an independent consultant. My work in this area is through my firm the Center for Invasive Species Prevention, and I advise the National Environmental Coalition on Invasive Species (NECIS). NECIS is a coalition of groups concerned about invasive species and Federal policy. It includes the National Wildlife Federation (NWF), The Nature Conservancy, The Wildlife Society and many other groups. Given the short notice for me being a witness, my full testimony has not been approved as NECIS testimony, but the positions I will advocate are directly from the NECIS comment on the Categorical Exclusion Proposal, which I drafted.

A bit on my background: I have 23 years of experience, both national and international, in invasive species as a policy analyst, attorney, advocate, lobbyist, consultant, manager, author and speaker. I have been invited to speak at conferences around the world on invasive species policy and management and testified three times before to this Sub or Full Committee on the topic - once back in 1993 and again in 2008 and 2012. I have approximately 15 publications addressing multiple aspects of invasive species, including having written the chapter on the "Pet Trade" in the comprehensive *Encyclopedia of Biological Invasions*, published in 2011 by the University of California Press. My most recent paper is in *Biological Invasions*, entitled "Invasive animals and wildlife pathogens in the United States: the economic case for more risk assessments and regulation."

On NEPA, I worked for the U.S. Fish and Wildlife Service, Region 2, in Albuquerque for five years as a NEPA compliance consultant. I have trained both law students (as an Adjunct Professor) and Federal officials in NEPA compliance. I am very familiar with this law as a practicing environmental lawyer.

Before getting into the Categorical Exclusion issue, let me talk about two subjects the Hearing Notice focuses on that go beyond NEPA.

- 1) **Why the completion of Economic assessments has become such a burden to the U.S. Fish and Wildlife Service?** They are a burden but the Categorical Exclusion has very little to do with Economic assessments and will not change the Service's obligation to do them. They are a burden as they require detailed economic analysis in some cases and the Service lacks the staff and funding to pay for them so they can take many years.
- 2) **Do I expect the agency to use a Categorical Exclusion for the hundreds of amphibian species that were proposed for listing in 2009?** First, that question is wrong in its facts. I wrote the 2009 Defenders of Wildlife petition on amphibians and it simply does not propose to list 100s of species of amphibians. That must be from some ill-informed blog or other source that has not read the Petition.

The background to that listing Petition is that a deadly disease carried in trade, the Chytrid fungus, is wiping out amphibians worldwide, including in the United States. In about 2006-2008, the World Organization for Animal Health (OIE) developed recommended measures to reduce the risk of chytrid in trade. That OIE standard was developed with extensive input by USDA Veterinary Services experts. It was adopted in 2008 unanimously by an OIE vote – consisting of delegates from virtually the entire world. The Defenders of Wildlife Petition to the Fish and Wildlife Service was very simply that the agency adopt that OIE standard into an enforceable trade regulation – as it is not an enforceable standard unless countries adopt it into law. Unfortunately, U.S. law on wildlife diseases is very sparse – the Lacey Act is it. In any event, the proposal in the Petition is not to list all amphibians as injurious. It would only list particular amphibian shipments as injurious if they do not comply with the unanimously-supported OIE standard. Shipments that comply and do not pose significant risk of carrying dangerous chytrid pathogens into the country would not be injurious, regardless of the species. The Service took exactly the same listing approach for all salmonid imports under the Lacey Act and it has worked – and people don't go around nonsensically saying that hundreds of salmon and trout species are listed as “injurious” because of that Lacey disease standard.

I would urge this subcommittee to look at this issue more closely and consider adopting a better law aimed specifically at preventing wildlife disease, as the Lacey Act is not the ideal law for that, but right now it is what we have. A great start is in Section 10 of HR 996, the Invasive Fish and Wildlife Prevention Act, that is right now in this subcommittee's jurisdiction. It was introduced by Mrs. Slaughter of New York and has 30 co-sponsors. The NECIS groups strongly support it and urge a hearing on it as soon as possible.

Now, on the Categorical Exclusion, or what NEPA practitioners call a “CatEx”; it will save wasted time and resources preparing unnecessary environmental assessments (EAs), which in the past have never found a significant impact from any non-native injurious species listing regulation, going back to 1982 when NEPA implementation began for this program. While my client environmental groups general disfavor CatEx.s, in this case it makes sense. Prohibiting an

injurious species is a positive environmental benefit, virtually by definition. Thus, preparing a NEPA EA is redundant. Avoiding that administrative step will help speed up listings.

This is consistent with NECIS policy positions urging the Service to do swifter injurious species listings. We do note that the Service's proposal correctly points out that the CatEx for listing a species does not apply to a possible later Federal management or control action for the listed species. In short, a Lacey Act injurious species listing does not compel or mandate any later Federal management or on-the-ground control actions for the species.

The United States currently has one of the developed world's slowest and costliest known systems for regulating imports of non-native injurious animals.¹ It has been criticized as too reactive and inadequate to address the ongoing invasion and disease risks of the globalized live wild animal trade, taking an average of four years to achieve one regulatory listing over recent decades.² The proposed CatEx is a small, needed step to partially remedy this.

Some comments from business interests allege that adoption of the CatEx might weaken the economic analysis that the Service conducts for proposed listings. That will not be the case. EAs under NEPA do not analyze purely economic effects, only economic effects that flow from environmental impacts. As it is very unlikely that there will be any environmental impacts from the listing of injurious non-native species, there will be no need to analyze resulting economic effects in a NEPA EA. Further, the CatEx does not in any way reduce the Service's obligation to assess economic effects of its listing proposals under other laws, primarily the Regulatory Flexibility Act.³ Any business concerned about economic effects can rely on that Act and need not rely on future NEPA EAs.

In fact, the economic arguments cut strongly in favor of speeding up the listing process, rather than keeping it in its slow *status quo*. A recent study reported in *Ecological Economics*, using years of United States data on amphibian and reptile imports, demonstrated how doing pre-import risk assessments for that segment of the trade can "pay off" in reduced costs for the nation.⁴ The study estimated the long-term expected net benefits from using a risk screening system range from roughly \$54,000 to \$141,000 for each species assessed, including both those species found to be harmful and non-harmful, assuming typical import and impact scenarios. While based on amphibian and reptile imports, the authors indicated that similar benefits likely apply to risk screening for birds, mammals and other groups. Their findings are consistent with findings from Australia documenting that pre-import risk assessments for the plant trade are cost-beneficial for that nation.⁵

¹ Jenkins PT (2012) Invasive animals and wildlife pathogens in the United States: the economic case for more risk assessments and regulation. *Biol. Invasions* DOI: 10.1007/s10530-012-0296-8

² Fowler AJ, Lodge DM, Hsia J (2007) Failure of the Lacey Act to protect US ecosystems against animal invasions. *Front. Ecol. Environ.* 5:353-359

³ Chapter 6, and section 804, of Title 5, United States Code.

⁴ Springborn M, Romagosa CM, Keller RP (2011) The value of nonindigenous species risk assessment in international trade. *Ecol. Econ.* 70:2145-2153

⁵ Keller RP, Lodge DM, Finnoff DC (2007) Risk assessment for invasive species produces net bioeconomic benefits. *Proc. Nat. Acad. Sci.* 104:203-207

The bottom line is our nation is losing potential economic benefits by allowing novel non-native animal species to be imported that have not gone through any risk assessment, as is overwhelmingly the case now. Speeding up the process and doing more risk assessments for such imports will provide more, not fewer, economic benefits for our country.

While the Service has properly observed in its proposal that it has never found a “significant” impact in three decades of doing NEPA EAs for listing proposals, nevertheless I concur with the Service that it is appropriate to allow for EAs to be prepared in “extraordinary circumstances” under long-standing Department of the Interior NEPA policies (50 CFR 46.215). Such extraordinary circumstances that would justify overriding the CatEx and conducting an EA or full EIS are hypothetical at this point, but it is not inconceivable that such circumstances could arise.

In sum, I applaud the care and foresight the Service has applied in this proposal and urge its swift adoption as an Interior NEPA policy.