TESTIMONY OF DAVID HOSKINS,
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BEFORE THE
U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS,
REGARDING
THE U.S. FISH AND WILDLIFE SERVICE PROPOSAL FOR A CATEGORICAL EXCLUSION FOR THE LISTING OF SPECIES AS INJURIOUS WILDLIFE

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Good morning Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee. I am David Hoskins, Assistant Director for Fish and Aquatic Conservation for the U.S. Fish and Wildlife Service (Service), and I welcome this opportunity to testify before you today.

As you are aware, the Secretary of the Interior has the authority to take regulatory action to list species of wild animals as "injurious wildlife" under 18 U.S.C. 42, a portion of the Federal statute sometimes called the Lacey Act. The public may also petition the Secretary for such a listing. Once listed under this statute, the species may not be transported over state lines or imported into the country without a permit. Permits may be granted only for zoological, educational, medical, and scientific purposes, if the Secretary deems that the permit ensures the continued protection of the public interest and health. A violation is a Class B misdemeanor, punishable by no more than six months in jail and/or up to a $5,000 fine for an individual, or $10,000 for an organization.

Before I explain our rationale for seeking a categorical exclusion under the National Environmental Policy Act (NEPA) for adding species as injurious under 18 U.S.C. 42, I would like to explain the purposes and obligations carried out by the Service in the implementation of this statute. The statute was first created by Congress in 1900 to protect United States' interests from the harmful effects of species that are determined to be injurious, including some specific species added by Congress (such as mongooses and bats known as "flying foxes") and "such other birds and animals as the Secretary of the Interior may declare to be injurious to the interests of agriculture or horticulture." In 1960, this was amended (74 Stat. 753) to apply the statute's prohibitions to any species that is "injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States." More recently, the zebra mussel (*Dreissena polymorpha*) was added by Congress to the list of injurious wildlife species during passage of the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) because of its rapid spread from initial introduction to the United States and the economic harm it was causing, including causing a Great Lakes power plant to close after the mussels interfered with its operation and damaged its infrastructure. The Service, therefore, implements 18 U.S.C. 42 in light of the purpose expressed in the original Lacey Act and subsequent amendments and the context of the Congressional zebra mussel listing to protect United States interests from the harm such species can cause to the nation's economic, environmental, and human interests. However, the administrative process for listing injurious

wildlife can be protracted and complex, reducing its effectiveness in preventing initial importation and introduction of new invasive species into the country.

Threats From Injurious Wildlife Species

Invasive species are among the primary factors that have led to the decline of native fish and wildlife populations in the United States and are among the most significant natural resource management challenges facing the Service.

Next to loss of habitat, invasive species are considered the greatest threat to native biodiversity. They play a significant role in driving populations of native species toward extinction. In fact, invasive species significantly harm the populations of about four in ten species listed under the Endangered Species Act (ESA). They are also among the most significant of threats to the National Wildlife Refuge System (NWRS), where they can destroy habitat, displace wildlife, and significantly alter ecosystems. While much of the invasive species burden on the NWRS is created by invasive plants that cover approximately 2.4 million acres of NWRS lands, there are also at least 4,423 invasive animal populations recorded on NWRS lands. Although the NWRS is committed to controlling and eradicating these invasive animals and plants, the task is challenging and expensive. Between 2004 and 2012, base funding spent on managing invasive species increased from $6 million to $17.2 million.

Among the best known of invasive species are the zebra mussel, noted above as listed as injurious wildlife by Congressional action, and the related quagga mussel (*Dreissena rostriformis bugensis*). Both are nonnative, invasive freshwater mollusks that negatively affect both the natural environment and human infrastructure. They spread rapidly, covering all available surfaces and removing large amounts of organic material from the water column, thus outcompeting and smothering native mussel species, including species federally listed as threatened or endangered. The mussels also clog municipal and industrial infrastructure that process water, such as power generating plants or fresh water supply transport and delivery; they cause an estimated $30 million in damage each year to water delivery systems in the Great Lakes[1]. These species attach quickly to recreational boating and other equipment used in fresh water, and they are then carried from one hydrologic system to another. In early 2007, quagga mussels were discovered in the Lake Mead National Recreation Area. They have since been found in Arizona, California, other parts of Nevada, and all 242 miles of the Colorado River Aqueduct. In January 2008, the first populations of zebra mussels were found in the San Justo Reservoir in California and Lake Pueblo in Colorado.

Another well-known example is the brown tree snake (*Boiga irregularis*), which is a major threat to the biodiversity of the Pacific region. A native of Indonesia, New Guinea, the Solomon Islands, and Australia, brown tree snakes arrived on Guam sometime during the 1940s or 1950s as stowaways on boats. The snakes have since spread across the entire island and have caused or contributed to the extirpation of 17 of Guam's native terrestrial vertebrates, including fruit bats, lizards, and 9 of 13 native forest bird species. Insect species that are no longer naturally controlled by native birds and lizards on Guam reduce fruit and vegetable production and their

[1] http://anstaskforce.gov/more_impacts.php

uncontrolled numbers require greater reliance on pesticides. Brown tree snakes also cause millions of dollars in damage to Guam's infrastructure and economy by climbing power poles and causing power outages. Of major concern is that the brown tree snake could be carried to other Pacific Islands (including Hawaii) and subtropical regions of the continental United States in cargo. The brown tree snake was listed as injurious in the early 1990s.

While the above examples were accidentally introduced into the United States and were not intentionally imported, deliberate importations have played a significant role as the origin of invasive species in the United States. Brought into the country to meet or create consumer demand, individuals of nonnative species have escaped – or been released – into the wild and have established reproducing populations in the wild. The United States is a leading import market for live non-native animals. Regardless of whether an invasive species was accidentally brought into the United States or intentionally imported, these species are costing the nation billions of dollars each year in local, State, and Federal tax dollars, loss of private incomes, and loss of economic potential.

One of the most widely known – and among the most dramatic -- of nonnative species imported into the United States are the group of fish known collectively as Asian carp. These include the silver carp (*Hypophthalmichthys molitrix*) and bighead carp (*Hypophthalmichthys nobilis*). Silver and bighead carp were imported into the United States 30 to 40 years ago to keep wastewater and aquaculture retention ponds clean. Competing with native fish for the same food sources, both carp species can quickly overtake native fish in biomass, and they can live for 20 years. They now occur in 23 states. The silver carp tends to jump *en masse* into the air when startled, and because they can grow to be 100 pounds, this can present a significant physical hazard for recreational boaters and fishermen. These two species have overwhelmed the Mississippi River Basin; commercial harvest of bighead carp in the Mississippi River Basin, for instance, increased from 5.5 tons to 55 tons between 1994 and 1997[2]. Within the Basin, Asian carps now compose up to a staggering 63 percent of the fish biomass[3]. The commercial value of Asian carp is extremely low and much less valuable than the native fish they replaced, and the loss of more commercially valuable fish is threatening an industry worth billions of dollars to the economies of the States in the region. The geographic range of Asian carp species is expanding in the Mississippi River Basin and threatening invasion of the Great Lakes.

As another example, a small number of nutrias (*Myocastor coypus*) were brought to the United States in the 1930s to the Chesapeake Bay and to Louisiana to bolster the fur trade. The nutria is a large, aquatic rodent from South America. Animals escaped or were released into the wild, and by the early 1990s, the Delmarva Peninsula (Eastern Maryland and Virginia and Delaware) population was estimated to exceed 150,000 animals. Although highly vulnerable to very cold winter temperatures, the rodent's capacity to reproduce allows its populations to quickly rebound and grow in milder spring, summer, and fall weather. Nutria eat aquatic plants, particularly brackish wetland species that are crucially important for holding wetland soils together to

[2] Chick, J. H., and M. A. Pegg. 2001. *Invasive carp in the Mississippi River basin*. Science 292(5525):2250-2251.

[3] Draft Asian Carp Surveillance Plan for areas outside of the Great Lakes. 2013.

prevent wetland loss to erosion and for providing food for native species in and around the Blackwater National Wildlife Refuge. In 2004, the Maryland Department of Natural Resources estimated that economic losses from related wetland damage were $4 million per year. This report also predicted that social losses and the losses associated with the environmental services of these wetlands could reach up to nearly $40 million a year by 2050 if the nutria population was not controlled[4]. Nutria has since been extirpated on the Refuge, but work to eradicate them from the Delmarva Peninsula continues.

Another example of a commercially imported species that has become established in the wild is the Burmese python, which was brought into the country for the pet trade. Many pythons have escaped or been released into the Everglades and other areas. A population of these snakes is established and breeding now, and the National Park Service reports that over 1,900 have been removed from Everglades National Park and surrounding areas. A study published in 2011 by the National Academy of Sciences links the growth of the Burmese python population in the Park with a severe decline in mammals in the Park, including a 98 percent decline in raccoons[5].

The ongoing efforts to control established populations of invasive species clearly cost much more than would prevention of their introduction. The Lacey Act injurious wildlife provisions provide the only legal instrument the United States can use to prohibit importation of such species, but the listing process can be protracted to effectively accomplish this. For example, a petition to list certain invasive carp species was received by the Service in October of 2002, but the final listing decision did not occur for 5 years.

The Listing Process

Under the injurious wildlife provisions of the Lacey Act, the Secretary of the Interior is authorized to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles, and the offspring or eggs of any of the aforementioned, that are injurious to human beings, or to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. An injurious listing subsequently prohibits importation and interstate transportation of that species. The provisions of the Act regarding injurious species are intended to protect human health and welfare and the human and natural environments of the United States by identifying and reducing the threat posed by certain nonnative wildlife species.

I would like to explain briefly how the Service currently lists species as injurious and what would change if we obtain the categorical exclusion. The Service currently complies with the legal requirements of the Lacey Act, the Administrative Procedure Act, the Regulatory

[4] Southwick Associates. 2004. *Potential economic losses associated with uncontrolled nutria populations in Maryland's portion of the Chesapeake Bay*, 17 pp.

[5]Dorcas, Michael E., et al. 2011. *Severe Mammal declines coincide with proliferation of invasive Burmese pythons in Everglades National Park*, Proceedings of the National Academy of Sciences (December 2011).

Flexibility Act, and other required determinations for all injurious rulemakings *and will continue to do so*. This includes NEPA.

The Lacey Act and the Administrative Procedure Act (APA) require that the agency explain in our rules the basis for our determination that a species qualifies as injurious and the effect that the action is expected to have on the public. The public has the opportunity to comment on the regulatory action. We will continue to present our biological assessments and evaluation of each species for injuriousness in our rules as part of analyses under the Lacey Act and the APA.

The Regulatory Flexibility Act is the governing statute that requires Federal agencies to analyze the effect of their regulatory actions on small entities (small businesses, small non-profit organizations, and small jurisdictions of government) and, where the regulatory effect is likely to be "significant," affecting a "substantial number" of these small entities, consider less burdensome alternatives for them. The Service will continue to provide the required information under the Regulatory Flexibility Act.

Executive Order 12866 for Regulatory Planning and Review looks at whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; whether the rule will create inconsistencies with other Federal agencies' actions; whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or whether the rule raises novel legal or policy issues. We have conducted and will continue to conduct economic analyses, where appropriate, under this Executive Order.

Under our current procedure for complying with NEPA, the Service prepares an environmental assessment (EA) for listing species as injurious. The purpose of an EA is to determine whether the proposed Federal action would result in a significant effect on the human environment requiring the preparation of an environmental impact statement (EIS). If, after investigating and preparing the EA, the agency finds no significant effects on the environment, the agency produces a Finding of No Significant Impact (FONSI). All injurious wildlife listing EAs subsequent to the enactment of NEPA have resulted in FONSIs, including the most recent—the 2012 listing of the four species of large, constrictor snakes as injurious wildlife.

The Proposed Categorical Exclusion

The Service is concerned with the length of time our previous listings have taken, because that protracted process has often defeated the purpose of the listing. Part of that process has been the preparation of EAs. However, the Council on Environmental Quality (CEQ) regulations allow the agency to establish a categorical exclusion and to bypass the completion of an EA or an EIS when undertaking actions that a Federal agency identifies that, under normal circumstances, do not have a potentially significant environmental impact, either individually or cumulatively (40 CFR 1507.3(b); 40 CFR 1508.4). 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 more resource-intensive EAs or EISs (CEQ 2010). Thus, we are pursuing the categorical exclusion.

To ensure that a categorical exclusion was appropriate for injurious wildlife listings, the Service first consulted with the Department of the Interior's Office of Environmental Policy and Compliance, and with CEQ, which administers NEPA implementation. CEQ approved the proposal for publication with notice and comment. Thus, the Service published the proposal in the *Federal Register* on July 1, 2013. The action is based on three justifications consistent with CEQ's guidance for categorical exclusions: (1) maintaining the environmental status quo, meaning the listing action does not cause the condition of the environment to change; (2) history of findings of "no significant impact" for injurious listings; and (3) the proposed categorical exclusion would be consistent with existing Service categorical exclusions. The Service must obtain CEQ's final approval after we address the public comments. To address concerns about the public comment period for the proposed categorical exclusion, the Service reopened it for 60 days on August 16, 2013, and comments are now due by October 15.

The categorical exclusion proposed would apply only to the listing of injurious wildlife species, not to any further Federal action taken to prevent introduction or control established populations of injurious wildlife species in the United States. This proposal is consistent with our ongoing efforts to increase the effectiveness of the Lacey Act injurious wildlife provisions to prevent the introduction and establishment of invasive species into new habitats in the United States and to maximize efficiency wherever possible in Service procedures. A categorical exclusion would give the agency the flexibility to forgo the preparation of an EA when, absent any "extraordinary circumstances", listing a species as injurious. The protections of NEPA would still apply. The review for using a categorical exclusion for a proposed listing would consider whether an "extraordinary circumstances" particular to the proposed listing, would merit additional environmental review. In the Department of the Interior's Manual (Environmental Quality Program Series, Part 516, Chapter 8-Managing the NEPA Process, U.S. Fish and Wildlife Service) is a section including the categorical exclusions that are currently in place and that may be used under appropriate circumstances.

Conclusion

In conclusion, the proposed categorical exclusion is consistent with NEPA and CEQ's regulations and guidance for complying with NEPA. With the categorical exclusion, the agency would have the flexibility to forgo preparing an EA. All analyses and assessments required under the Lacey Act and other applicable statutes would continue to be carried out for each proposed injurious wildlife listing.

With the increasing globalization of trade and potential for invasions of harmful species, the Federal Government needs to create more efficient procedures, to strengthen the Service's ability to protect the nation's interests from harm caused by invasive species. This one step of obtaining a categorical exclusion would greatly strengthen the Service's ability to act quickly yet intelligently to protect the Nation from invasive species.