

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FWS–HQ–FHC–2013–N044;
FXFR1336090000–134–
FF09F14000]

National Environmental Policy Act:
Implementing Procedures; Addition
to Categorical Exclusions for U.S.
Fish and Wildlife Service

AGENCY: Department of the Interior.

ACTION: Notice; request for
comments.

SUMMARY: This notice announces
a proposed categorical exclusion
under the National Environmental
Policy Act (NEPA) for the U.S. Fish
and Wildlife Service. The proposed
categorical exclusion pertains to
adding species to the injurious
wildlife list under the Lacey Act. The
addition of this categorical exclusion
to the Department of the Interior's
Departmental Manual will improve
conservation activities by making the
NEPA process for listing injurious
species more efficient.

DATES: We will consider comments
we receive on or before July 31,
2013.

ADDRESSES: Comment
submission: Send comments to
Susan Jewell, by one of the
following methods:

- U.S. mail or hand delivery: U.S.
Fish and Wildlife Service; 4401 N.
Fairfax Drive, Suite 700, Arlington,
VA 22203; or
- Email: prevent_invasives@fws.gov
(emails must have "Categorical
Exclusion" in the subject line).
Document availability: You may view
the Departmental Manual at [http://
elips.doi.gov/elips/](http://elips.doi.gov/elips/).

FOR FURTHER INFORMATION
CONTACT:

Susan Jewell, U.S. Fish and Wildlife
Service, 4401 N. Fairfax Drive,
Arlington, VA 22203; telephone 703–
358–2416. If you use a
telecommunications device for the
deaf, please call the Federal
Information
Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under the National Environmental
Policy Act (42 U.S.C. 4321 et seq.,

NEPA), Federal agencies are
required to consider the potential
environmental impact of agency
actions prior to implementation.
Agencies are then generally required
to prepare either an Environmental
Assessment (EA) or an
Environmental Impact Statement
(EIS). However, when a Federal
agency identifies classes of actions
that under normal circumstances do
not have a potentially significant
environmental impact, either
individually or cumulatively, Council
on mstockstill 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 those actions (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).

The U.S. Fish and Wildlife Service
(Service) has identified that it would
be appropriate to provide for a
categorical exclusion for the Federal
action of adding species to the list of
injurious wildlife under the Lacey Act
(18 U.S.C.42, as amended; the Act).
The Act authorizes the Secretary of
the Interior, as delegated to the
Service, 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. 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 wildlife
species. Listing these species as
injurious under the Act subsequently
prohibits the species from being
imported into the United States or
transported across State
lines.

The listing of species as injurious is,
as an agency action, subject to
environmental review under NEPA
procedures. The Service has
generally prepared EAs for listing
rules. A categorical exclusion would
allow the Service to exercise its
authority to protect human health

and welfare, certain human
environments, and trust resources
from harm caused by injurious
species more effectively and
efficiently by precluding the need to
conduct redundant environmental
analyses.

In 2002, the Service used an existing
departmental categorical exclusion
("Policies, directives, regulations,
and guidelines: that are of an
administrative, financial, legal,
technical, or procedural nature; or
whose environmental effects
are too broad, speculative, or
conjectural to lend themselves to
meaningful analysis and will later be
subject to the NEPA process, either
collectively or case-by-case" (43
CFR 46.210(i)) in two listing actions.
Upon further review, the Service
believes that this is not the best
description of why injurious species
listings do not have a significant
effect on the human environment.
Therefore, the Service is pursuing
the addition of a new categorical
exclusion for the listing of injurious
species under the Act.

Proposed Categorical Exclusion

The Department of the Interior is
proposing to add a categorical
exclusion to the Department Manual
at 516 DM 8.5 C, which covers
"Permit and Regulatory Functions."
This section includes approved
categorical exclusions that address,
among other things, the issuance of
regulations pertaining to wildlife. This
proposed addition would provide for
a categorical exclusion for only the
regulatory action of listing species as
injurious (that is, adding a species to
the list). The regulatory listing action
places the species on a prohibited
list, which prohibits their importation
into the United States and interstate
transportation. Thus, the activities
covered under the categorical
exclusion are simply to keep
species out of the country that are
injurious or to prevent their spread
across State lines.

The categorical exclusion would not
cover, for example, control actions
(such as constructing barriers) or
eradication actions (such as applying
pesticides). Any such injurious
species management measures
conducted by any Federal agency
would undergo appropriate NEPA
analysis and documentation prior
to implementation of the action. The
categorical exclusion would also not
cover the issuance of permits
(available for individual specimens

intended for zoological, educational, medical, or scientific use), which is already covered under an existing categorical exclusion (516 DM 8.5 C(1)). The categorical exclusion would not cover the removal of species from the injurious wildlife list under the Act.

Additionally, application of the proposed categorical exclusion would be subject to a review of extraordinary circumstances established in regulation by the Department of the Interior (see 50 CFR 46.215). Extraordinary circumstances would be subject to the factors or circumstances that would cause an otherwise categorically excludable action to require further analysis in an EA or EIS. Thus, notwithstanding the existence of this categorical exclusion, the Service would have to develop an EA or EIS if it found the extraordinary circumstances applied to the listing of a particular injurious species.

Analysis

The intent of the proposed categorical exclusion is to more effectively protect the human and natural environments of the United States from injurious species by making the listing process under the Act more efficient. The following three justifications support the categorical exclusion:

(1) Maintaining the environmental status quo. The listing action preserves the environmental status quo. That is, these listings ensure that certain potential effects associated with introduction of species that have been found to be injurious do not occur. In this way, injurious wildlife listings maintain the state of the affected environment into the future—the state of the environment prior to listing or potential introduction in the absence of a listing. Thus, prohibiting a nonindigenous injurious species from being introduced into an area in which it does not naturally occur cannot have a significant effect on the human environment.

Because the proposed categorical exclusion also serves to make the listing process under the Act more efficient, and the listing process is designed to limit undesirable environmental effects in the future, the categorical exclusion itself supports maintenance of the environmental status quo.

(2) History of findings of no significant impact. Every EA prepared for an injurious species listing under the Act since 1982 (the first rule promulgated after environmental-assessment guidance was established under NEPA) as part of a formal NEPA analysis has resulted in a finding of no significant impact (FONSI) without requiring mitigation measures, and, therefore, did not necessitate the preparation of an EIS.

The species listed for which an EA was prepared include the raccoon dog (*Nyctereutes procyonoides*, 1983), the Chinese mitten crab (genus *Eriocheir*, 1989), the brown treesnake (*Boiga irregularis*, 1990), the silver carp (*Hypophthalmichthys molitrix*, 2007), the black carp (*Mylopharyngodon piceus*, 2007), the largescale silver carp (*Mylopharyngodon piceus*, 2007), and four species of large constrictor snakes (Burmese python (*Python molurus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), and yellow anaconda (*Eunectes notaeus*, 2012).

The issues addressed in the EAs that were prepared for these species include the biology of the species (countries of origin, native range, habitat requirements, and food species) introduction and dispersal pathways (how a species was transported), ecological impacts (including effects on native, threatened, and endangered species), human impacts (including effects on recreation and water quality), economic impacts (including industry and agriculture), and cumulative impacts. While these species, when present in a nonnative range, can have a significant effect on the environment, the regulatory action (listing) has no significant effect. That each EA resulted in a FONSI strongly suggests that subsequent listings will also have no significant environmental impacts.

(3) Consistent with existing approved categorical exclusions. A categorical exclusion for the injurious listing process is consistent with the Service's existing approved categorical exclusions. Categorical exclusions have been approved that address preventing the introduction of nonindigenous species. For example, research, inventory, and information activities directly related to the conservation of fish and wildlife resources are categorically

excluded as long as they do not involve, among other things, "introduction of organisms not indigenous to the affected ecosystem" (516 DM 8.5 B(1)).

Next Steps

The establishment of the categorical exclusion is open to public comment. Following review of the comments, the Service will submit the final categorical exclusion to CEQ, which will review it and our responses to public comments for conformity with NEPA and make a recommendation regarding approval of the categorical exclusion. If the categorical exclusion is approved by the Department, the Service will review each subsequent listing rule for the DOI-established extraordinary circumstances that would necessitate the preparation of an EA or an EIS. The Administrative Procedure Act rulemaking procedures and the review of extraordinary circumstances both ensure that the decision to apply the categorical exclusion as part of the NEPA environmental review is informed by input from other Federal agencies, other governmental and Tribal entities, and the public.

Public Comments

Any comments to be considered on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by the date listed in DATES at the location listed in ADDRESSES. Comments received after that date will be considered only to the extent practicable. Comments, including names and addresses of respondents, will be posted at <http://www.fws.gov/injuriouswildlife>. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Proposed Text for the Departmental Manual

The text we propose to add to 516 DM (see ADDRESSES) is set forth below:
Part 516: National Environmental Policy Act of 1969
Chapter 8: Managing the NEPA Process—U.S. Fish and Wildlife Service

8.5 Categorical Exclusions.

C. Permit and Regulatory Functions.

(9) The adding of species to the list of injurious wildlife regulated under 50 CFR subchapter B, part 16, which prohibits the importation into the United States and interstate transportation of wildlife found to be

injurious.

Dated: May 31, 2013.
Willie R. Taylor,
Director, Office of Environmental Policy and Compliance.

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BILLING CODE 4310-55-P

Via <http://www.gpo.gov/fdsys/pkg/FR-2013-07-01/pdf/2013-15707.pdf>