

# Fish and Wildlife Service's Lacey Act Authorities and Cooperative Risk Management Activities

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# Presentation Outline

- Background
  - Lacey Act
    - Title 16
    - Title 18
- Risk Assessment
- Risk Management
  - Unilateral (FWS) and Cooperative
  - Regulatory
  - Non-Regulatory

# Lacey Act: Two Sections

## Title 16 USC § 3372: (*Broad*)

Assistance to States with intercepting illegal importation and interstate transport of wildlife species and plants taken or possessed in violation of State, Federal, Tribal, or foreign laws

## Title 18 USC § 42: (*Injurious Wildlife*)

Prohibits importation and interstate transport of **injurious wildlife**

# Definition: Injurious Wildlife

- “Wildlife” found through regulation or Congressional action to be **injurious to the** interests of human beings, agriculture, horticulture, forestry, wildlife or wildlife resources of the U.S.
- Includes **wild mammals, wild birds, fishes, reptiles, amphibians, mollusks, crustaceans**
- Does NOT include plants, pathogens, and most invertebrates



## 18 USC 42

### What Does Injurious Wildlife Mean?

#### Prohibited

- Importation
- Interstate transportation
  - Of only live animals, unless dead is specified

**Exceptions:** Permits may be issued for zoological, educational, medical, and scientific purposes

**Allowed:** Within State use, possession, sale, & transport, consistent with State laws & regulations

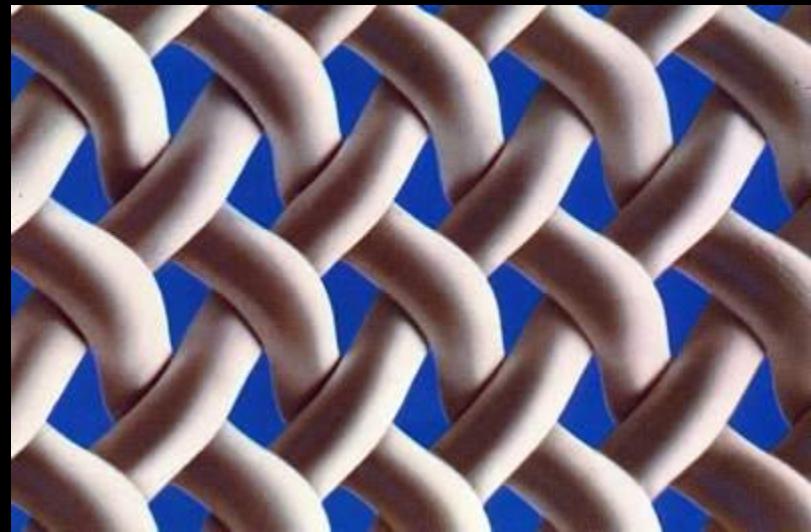


# Definitions

- Risk Assessment:
  - Risk characterization
- Risk Management:
  - ...weighing [and implementing] policy alternatives

# Definitions

- Risk Screening:
  - Rapid (hours) risk assessment



# Historically, FWS Risk Assessments were State-of-the-Art

- If that art was finger painting



# Bests Predictors of Species Invasion

- For a species, best predictors of invasiveness are:
  - “History of invasiveness”
  - “Climate/Habitat match:”
    - Climate match
      - Between locations where established, and
      - Target locations (e.g., US)
    - Habitat Match
  - “Propagule Pressure”

# Great Lakes Restoration Initiative

- I have received funding for conducting rapid screening to support regulatory and non-regulatory decision making
  - Last three years 2,000 species screened in DRAFT form
    - Screening reports are being posted online
      - FWS website
      - Comments on reports enabled

# Risk Management Decision Support: Risk Screening Reports

- Outputs (ERSSs) will be:
  - Used during FWS decision making re: Lacey Act
  - Posted on the WWW so State and industry partners can also use information to:
    - Advance:
      - Regulatory approaches
      - Non-regulatory approaches intended to help promote sustainable commerce



# Recent FWS Rule Promulgation

# Salamander Listing: FWS Interim Rule

- January 12, 2016: Interim rule listing 201 salamanders published
  - To proactively prevent a pathogen (Bsal) from being introduced into the U.S.
  - Dead specimens and parts regulated
- January 28: Interim rule into effect
- March 14: Public comment and peer review period closed
- Final Rule: by October 31

## 11 Species Listing: FWS Proposed Rule

- Proposed rule to list 11 species as Injurious (Lacey Act)
  - For species mostly NOT currently in US trade
  - Published in the Federal Register October 2015

## 11 Species Listed

- Species rulemaking based, in large part, on Ecological Risk Screening Summaries completed
  - All are **HIGH RISK**



**Crucian Carp**  
Photo Credit:  
[Kentfishing.webs.com](http://Kentfishing.webs.com)

# 11 Species

- **Fishes:**
  - Amur Sleeper, Crucian Carp, Prussian Carp, Eurasian Minnow, European Perch, Nile Perch, Roach, Stone Moroko, Wels Catfish, Zander
- **Crayfish:**
  - Yabby



**Nile Perch**

**Photo Credit: Africatime.com**

# 11 Species Characteristics

- All 11 species have:
  - High climate niche match with interjurisdictional sections of the U.S.
  - History of invasiveness outside their native ranges
- 10 species are not known to be established in U.S.
  - EXCEPT Zander established in Spiritwood Lake, North Dakota



Zander

Photo Credit: [Gofishing.co.uk](http://Gofishing.co.uk)

# 11 Species Trade Status

- Proposed rule focused on species mostly not in trade
  - Therefore, no substantive, negative economic impacts
  - FWS received comments on the rule that overwhelmingly supported proposed rule making
    - Conservation groups
    - Association of Fish and Wildlife Agencies (AFWA)

**Prussian Carp**  
**Photo Credit: CAFS**



## Timeline and Next Steps

- Final rule issued September 30, 2016
- Effective October 31, 2016



Yabby

Photo Credit: deviantart.net

# Cooperative Risk Management

- State Regulatory
  - MI Law
    - Requires assessment of risk of various lists of species including nonnative species in MI trade (est. 16,000 or more)
      - FWS method for non-plant species
      - USDA method for plants
- State/Provincial
  - Council of Great Lakes Governors and Premiers
    - Past
    - Future
      - Rulemaking harmonization project

# Cooperative Risk Management: MOU with PIJAC and AFWA

- Implementation of MOU with Pet Industry Joint Advisory Council (PIJAC) & States (Association of Fish & Wildlife Agencies—AFWA)
  - Species, NOT in trade, provisionally assessed by FWS as high risk, will be cooperatively evaluated
    - Voluntary, industry risk management may result

# Association of Fish and Wildlife Agencies: Requested Input on Species

- Based on information available, FWS has assessed risk of about 2,000 species
  - 14 species are:
    - High Risk
    - Not known to be in substantial trade within the U.S.

# Association of Fish and Wildlife Agencies: Planned Next Steps for the 14 Species

- **Modify the list**, if information changes our understanding of trade status
- For species not in trade:
  - **FWS requested review**, by the AFWA ISC MOU Working Group
    - Of ERSSs for the 14 species

# Association of Fish and Wildlife Agencies: Requested Input for Species IN TRADE

- For high risk species in trade
  - Will work under aegis of AFWA Invasive Species Committee

## Other Cooperative Collaborative Activities

- States, NGOs, & industries are welcome to request species risk assessments from FWS
  - To support State rule making, NGO activities, & industry decisions on selecting “sustainable” species for trade

## Congress: AIS Legislation

- Comprehensive Federal legislation **last enacted in 1996**
- **3 Consecutive Congressional Sessions**— Introduced, but not enacted
  - House & Senate bills
    - e.g., **Invasive Fish and Wildlife Prevention Act of 2016**
      - S 3278 (Gillebrand – NY)
      - HR 5895 (Slaughter – NY)
      - Language “**establish a process** to ensure that all taxa [not previously in trade] are [**risk assessed**] to determine whether they should be regulated...”

# Needed: From My Perspective

- National Summit on State, Federal (and local) regulation
  - Status of State-Federal-local rules
    - Need for comprehensive, strategic approaches to:
      - Communicating risk assessment results
        - » Needs for risk management
      - Coordinating risk management (rule making, enforcement)
        - » Federal-Regional-State-Local

# QUESTIONS?



**Wels Catfish**

**Photo Credit: Gofishinn.com**

