

Hicks-Ray Associates



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TO: WESTCAS Membership

FROM: Hicks-Ray Associates

SUBJECT: US Fish and Wildlife Service Seeks to Streamline Listing of Species Under The Lacey Act

With no fanfare, the US Fish and Wildlife Service is seeking a “categorical exclusion” to shorten the administrative process which it uses to list a species under the Lacey Act. The Federal Register Notice was posted on July 1 on pages 39307-09 and the comment period ends July 31.

The Lacey Act prohibits the transfer over a state line of a listed species. Earlier this week, we sent you a report detailing the convoluted actions of Fish and Wildlife to control the international shipment of 4 species of pythons while at the same time ensuring that they did not cross state lines. Imagine how this would work for water supply in the Arid West if HR 1823, as introduced, passes the Congress without amendment and quagga mussels become a listed species under the Lacey Act.

Based on current Fish and Wildlife policy, water agencies would be prohibited from transferring water even in a closed pipeline across a state line. If you don’t think this is possible, then consider the experiences last year of the North Texas Municipal Water District and their 1.7 million customers who were deprived of 28% of their water supply in the midst of a drought of record when zebra mussels were discovered in the Oklahoma portion of one of their reservoirs. Restoration of their water supply required Congressional legislation.

This is how Fish and Wildlife explain their proposed action:

“The Service recognized that the current process of listing species as injurious under the Lacey Act has aspects that are inefficient and counterproductive to our mission of safeguarding our national resources. Our listing process can take several years, and in that period a species that could have been stopped at the border could become irrevocably invasive.”

“In other words, neither an EA nor an EIS would be required for the regulatory listing action that places a species on a prohibited list under 50 CFR 16 [of the Lacey Act] which prohibits their importation into the United States and across state borders.”

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The Fish and Wildlife Service does propose an “extraordinary circumstances” option in its Federal Register notice:

“Application of the proposed categorical exclusion would be subject to a review of extraordinary circumstances established in regulation by the Department of the Interior. Extraordinary circumstances would be subject to the factors or circumstances that would cause an otherwise categorically excludable action to required 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.”

Have you, as a WESTCAS member, ever found the process of developing EA’s and EIS’s to be time-consuming for your projects? Would you like a “categorical exclusion” to apply to your own projects? Would you bet your ability to transfer water over state lines on your success in convincing the US Fish and Wildlife Service that you deserve an “extraordinary circumstances” designation?

It is important that WESTCAS submit comments by July 31 with regard to this proposed action. We are already working with a number of agencies and associations to create a coordinated and timely response.

Please stay tuned because this is a “breaking news” type issue.