



American Fisheries Society

Organized 1870 to Promote the Conservation, Development, and Wise Utilization of the Fisheries

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The Honorable Louise Slaughter
2469 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Representative Slaughter:

I am writing to you concerning HR 996 “Invasive Fish and Wildlife Prevention Act” to provide comments on behalf of the American Fisheries Society (AFS). This letter neither endorses nor opposes HR 996, but highlights concepts that we consider to be important for improving invasive species management, as well as some aspects of concern.

The AFS is the oldest and largest society of fisheries professionals in the world. We represent over 9,000 members from natural resource management and regulatory agencies, academia, non-governmental organizations, and industry.

The AFS represents a diverse membership and acknowledges both the harm that some non-native species (e.g., Zebra Mussels) cause as well as the socio-economic benefits of many non-native species (e.g., Brown Trout). Some species reduce the abundance of natives by predation, competition, and transferring disease; some alter important habitat needed for native species and ecosystem services; some impact economic activities such as fisheries and aquaculture; and some threaten biodiversity. Conversely, non-native species are vital to U.S. fisheries and agriculture, including aquaculture; are important pets and companion animals; and in some cases provide ecosystem services and benefits, especially when ecosystems are degraded.

The current federal framework for preventing and reducing the negative impacts of truly invasive species has proven inadequate to protect the environment and economy of the United States from several damaging non-native species. The current listing process for injurious species is cumbersome, slow, and generally reactive rather than proactive. Therefore, the AFS supports efforts to improve the process for listing injurious wildlife and other methods of federal invasive species management, as well as building capacity within the U.S. Fish and Wildlife Service (USFWS) to address this vital issue.

Any new process should seek to balance and address the concepts of environmental protection, reasonable economic activity, and personal liberties. It should be timely and effective, and there should be dedicated funding for the program. The listing process should use sound science from inside and outside of the federal government. To the best of the ability of foresight, new regulations should avoid negative unintended consequences.

Some considerations for revisions to federal injurious wildlife listings include:

- Focus on non-native species new to U.S. trade or emerging introduction pathways into the United States, rather than the historic practice of focusing on species already widely established in the

environment or long-traded. This does not preclude evaluating species already here, but focuses resources towards prevention in a proactive manner.

- The listing process must acknowledge that there are limitations and biases, often of a serious nature, to all risk assessment methods, including uncertainty related to data quantity and quality, assessor variability, and methodology. These shortcomings are magnified in rapid screening tools. Peer-review of assessment products improves their quality.
- Risk assessments are best used as information tools rather than decision tools, and other information is needed to make a regulatory decision. An example is the Brown Trout, native to Europe but introduced into the United States in 1883 by the U.S. Fish Commission. It has a well-documented history of negative effects on native fishes, including sport fish and species listed under the Endangered Species Act. It occurs in nearly every U.S. state except for the southern-most. Given this information, the brown trout would be rated as high to very high risk by any risk assessment or screen. Nevertheless, the brown trout is one of the most socio-economically valuable fishes in the United States and is widely cultured and stocked in the United States by government hatcheries.
- Regulations and requirements for listing a species must be clear and consistent, as must be regulations covering possession and transport of listed species, including non-native species in the hands of the public and industry at the time of listing. Regulations must be enforceable from a law enforcement perspective while simultaneously avoiding undue burden on agencies, industries, or the public who may unintentionally and unknowingly move some taxa in the course of other activities (e.g., insects, plankton). Listing activities must not promote the release of non-native species into the environment by the public or industries.
- Emergency powers are needed by the USFWS to respond quickly to emerging threats, but must be clearly defined and not place undue burden on trade.
- Taxonomic coverage of authority should be clear and encompass vertebrates and appropriate invertebrate groups (e.g., Asian horseshoe crabs) to allow for reasonable management without infringing on authority of agencies with well-established roles in regulation (e.g., U. S. Department of Agriculture).
- Ensure that the process for petitioning a status change in species listing is not such that large volumes of petitions become an undue burden on the resources of the USFWS.
- Recovering a portion of the costs to implement the program (i.e., user-pay fees) can be an effective management model. Costs should be reasonable and not place undue burden on small businesses. Costs should be paid by actual users, for example industries seeking to import and trade in novel species or those petitioning for status changes in species' listings. Costs for assessing species already in legal trade should not be borne unfairly, and dedicated funding will still be necessary.
- Emerging issues related to disease are important for fish and wildlife management, but have considerable legal (national and international) and technical complexity. The USDA-Animal and Plant Health Inspection Service (USDA-APHIS) is the internationally recognized competent authority on animal health for the United States. Their role has changed over recent years by taking on additional initiatives in wildlife and aquatic animal health (e.g., National Aquatic Animal Health Plan). The USFWS and USDA-APHIS should work together to determine gaps in federal fish and wildlife health regulations. Once the gaps are identified, specific legislation could provide appropriate authority to the agencies to address them. Treating pathogens as injurious wildlife could have large and negative unintended consequences for agencies and industry.

HR 996 has at least three major issues that may impede effective implementation. The bill fails to: (1) provide details necessary for clarity in rule making and implementation: (2) address the regional nature of risks: and (3) emphasize risk management.

Much of the language in HR 996 is vague as to definitions and procedures, leading to uncertainty in the regulatory process that will eventually emerge. Considerable latitude is given to the USFWS to, in essence, create a new regulatory model. The USFWS is a long-standing, valued partner of the AFS and has contributed immensely to our organization with a distinguished history of USFWS employee membership and leadership in AFS. Nevertheless, high uncertainty as to eventual regulations and their potential consequences — positive, negative, and unintended — lead to considerable concern. The details of rules and procedures arising from this legislation will largely determine the success or failure of invasive species management in the United States for some time, yet those very details are thus far unknown. A better approach would be to have a vetted regulatory process proposed and then provide legislation authorizing that process.


Risk of invasive species is regional, yet current laws and any regulations derived from HR 996 are “one-size-fits-all.” A good example is the Walking Catfish, the first fish species listed as injurious under the Lacey Act. This is a tropical species with risk limited to Florida, Hawaii, and perhaps a few other warm regions, but it is of no consequence to the vast majority of the United States where it cannot survive. Lacking a regional approach, federal management is forced into one of two unfortunate decisions for many species — list the species as injurious to protect a small portion of the country at the expense of the remainder, or allow the species’ importation and interstate transport and potentially impact that small portion. A better approach would be to clearly delineate and fund federal-state partnerships to address invasive species risk at the regional level.

Risk screens and other forms of risk assessment address the potential for a non-native species to establish and cause impacts. Complete risk analysis includes another important component: risk management. This process addresses the steps that can be taken or are already in place to mitigate risks and to render them acceptable. Risk management also takes benefits (e.g., economics) into account. The injurious wildlife listing and associated regulations are a form of risk mitigation. For some species, lesser forms of mitigation may be ineffective and thus listing is warranted. Nevertheless, effective risk management options short of injurious wildlife listing are available for many potentially problematic species. Language in HR 996 suggests a consideration of state efforts, economics, and other applicable laws. We recommend more emphasis on risk management and clear direction to the USFWS on this issue.

In summary, the AFS welcomes efforts to improve the federal injurious wildlife listing process. Our assessment of HR 996 is that the bill provides some steps forward towards incorporating concepts vital to an effective and reasonable revision of an important aspect of federal invasive species management; however, the large scope of uncertainty over implementation and potential unintended consequences are causes for apprehension.

The AFS encourages a constructive national discussion on federal management of invasive species and pledges our willingness to contribute our viewpoints and expertise to the issue. Please let me know if we can provide any assistance in the future.

Sincerely,



John Boreman, Ph.D.
President

cc: HR999 Co-sponsors, AFS Governing Board, USFWS