



February 12, 2004

Gary Taylor, Legislative Director
International Association of Fish and Wildlife Agencies
444 North Capitol St., NW, Suite 544
Washington, D.C. 20001

Dear Mr. Taylor:

I am writing on behalf of the Mississippi Interstate Cooperative Resource Association (MICRA) in regard to our growing invasive species problem. MICRA is requesting that the International Association of Fish and Wildlife Agencies (IAFWA) develop and support a legislative initiative that will establish a “screening process” prior to importation into the U.S. of any nonindigenous species of aquatic flora and fauna. In other words, MICRA is asking for federal legislation which will establish “clean species lists”.

The aquatic nuisance species problem has become an especially “hot media topic” over the past year or so. The finding of the snakehead in various waters across the U.S. (Maryland, Wisconsin, etc.), and the spread and ultimate naturalization of Asian carp have brought this issue to a head. It seems that the importation and escape of nonindigenous species from aquaria and aquaculture operations is out of control, and the need for improved species screening and establishment of clean species lists has surfaced during many recent discussions.

MICRA’s Executive Board debated and supported this need at their December meeting in Kansas City, Missouri, and then submitted the issue to the full MICRA membership for a vote. The need for action on this issue was overwhelmingly supported by 27 of our 28 member states, with only the state of Mississippi failing to register a vote. We think that this vote clearly indicates that the states are ready for such legislation.

While such a screening process is currently included in the National Aquatic Invasive Species Act (NAISA, S. 525 and H.R. 1080), we are concerned that NAISA is too cumbersome and will likely remain “bogged down” in Congress for an indefinite period of time. We feel that we simply can’t wait for NAISA to move forward, and that separate legislation is needed now.

Consequently, we are asking that you forward this request to the IAFWA Fisheries and Water Resources Policy Committee for consideration at their March meeting in Spokane. We are in the process of extracting the species screening language from NAISA, and placing it in the form of separate legislation for your consideration. We will forward that document to you under separate cover within the next few days.

If you have any questions, please do not hesitate to contact me at (620) 672-5911 or our Coordinator, Jerry Rasmussen at (309) 793-5811. Thanks for any assistance you can provide on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Doug Nygren". The signature is written in a cursive, flowing style.

Doug Nygren, Chairman

cc: Doug Hansen, Chairman, IAFWA Fisheries and Water Resources Policy Committee
MICRA Delegates
MICRA Executive Board



February 19, 2004

Gary Taylor, Legislative Director
International Association of Fish and Wildlife Agencies
444 North Capitol St., NW, Suite 544
Washington, D.C. 20001

Dear Mr. Taylor:

This letter is a follow-up to my February 12, 2004 correspondence regarding MICRA's request that the International Association of Fish and Wildlife Agencies (IAFWA) develop and support a legislative initiative establishing a "screening process" prior to importation into the U.S. of any nonindigenous species of aquatic flora and fauna. Attached please find a copy of the draft legislation promised in that correspondence.

MICRA's draft (The Clean Species Listing Act of 2004) is based on language which is included in the National Aquatic Invasive Species Act (NAISA, S. 525 and H.R. 1080) currently before Congress. Our members feel that the MICRA draft is a good start toward solving an important part of the Nation's invasive species problem, but that some additional adjustments in language may be needed. Specifically, MICRA's discussions to date have related to appropriations and the adequacy of fines provided for in the legislation.

Perhaps forthcoming discussions within the IAFWA can, in part, address the following issues:

1. Can this legislation be implemented without special appropriations?
2. If not, which agencies (USFWS, USGS/BRD, etc.) will need special appropriations and how large should they be?
3. Are the fines provided for in NAISA large enough to discourage intentional violation of the Act?
4. If not, what level of fines are needed to effectively discourage violation?

If you have any questions, please do not hesitate to contact me at (620) 672-5911 or our Coordinator, Jerry Rasmussen at (309) 793-5811. Thanks for your assistance on this important matter.

Sincerely,

Doug Nygren, Chairman

cc: Doug Hansen, Chairman, IAFWA Fisheries and Water Resources Policy Committee
MICRA Delegates
MICRA Executive Board

TITLE III – AUTHORIZATION OF APPROPRIATIONS

SECTION 2. FINDINGS.

Congress finds that --

- (1) invasive species can cause devastating declines in local, regional, and national species diversity;
- (2) aquatic invasive species continue to be introduced into waters of the United States;
- (3) aquatic invasive species damage infrastructure, disrupt commerce, out compete native species, reduce biodiversity, and threaten human health;
- (4) the direct and indirect costs of aquatic invasive species to the economy of the United States amount to billions of dollars per year;
- (5) in the Great Lakes region, approximately \$3,000,000,000 has been spent in the past 10 years to mitigate the damage caused by a single invasive species, the zebra mussel;
- (6) recent studies have --
 - (A) demonstrated that, in addition to economic damage, invasive species can cause enormous ecological damage; and
 - (B) cited invasive species as the second leading threat to endangered species;
- (7) over the past 200 years, the rate of detected marine and freshwater invasions in North America has increased exponentially;
- (8) wetlands suffer compound impacts from --
 - (A) terrestrial infestations (such as Nutria);
 - (B) aquatic infestations (such as Hydrilla); and
 - (C) riparian infestations (such as Purple Loosestrife);
- (9) the rate of invasions continues to be unacceptable;
- (10) infestations by aquatic invasive species often spread and cause significant, negative regional, national, and international effects;
- (11) prevention of aquatic invasive species is the most environmentally sound and cost-effective management approach because once established, aquatic invasive species are costly, and sometimes impossible to control;
- (12) consistent national screening criteria are needed to evaluate the potential risk of nonnative aquatic species prior to introduction into the U.S; and
- (13) it is in the interest of the United States to prepare and publish a list of “clean species” which can be legally imported into the U.S.

SEC. 3. DEFINITIONS.

Section 1003 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4702) is amended to read as follows:

SEC. 1003. DEFINITIONS.

In this Act:

- (1) Aquatic ecosystems in the United States. -- The term “aquatic ecosystems in the United States” means freshwater, marine, and estuarine environments (including inland waters and wetlands), located in waters of the United States.

- (2) Director. -- The term "Director" means the Director of the United States Fish and Wildlife Service.
- (3) Great lake. -- The term "Great Lake" means --
- (A) Lake Erie;
 - (B) Lake Huron (including Lake Saint Clair);
 - (C) Lake Michigan;
 - (D) Lake Ontario;
 - (E) Lake Superior;
 - (F) the connecting channels of those Lakes, including --
 - (i) the Saint Mary's River;
 - (ii) the Saint Clair River;
 - (iii) the Detroit River;
 - (iv) the Niagara River; and
 - (v) the Saint Lawrence River to the Canadian border; and
 - (G) any other body of water located within the drainage basin of a Lake, River, or connecting channel described in any of subparagraphs (A) through (F).
- (4) Great lakes region. -- The term "Great Lakes region" means the region comprised of the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.
- (5) Indian tribe. -- The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (6) Interstate organization. -- The term "interstate organization" means an entity that --
- (A) is established by --
 - (i) an interstate compact approved by the Congress;
 - (ii) an Act of Congress; or
 - (iii) an international agreement to which the United States is a party;
 - (B) (i) represents 2 or more --
 - (I) States (or political subdivisions of States); or
 - (II) Indian tribes;
 - (ii) represents --
 - (I) 1 or more States (or political subdivisions of States); and
 - (II) 1 or more Indian tribes; or
 - (iii) represents the Federal Government and 1 or more foreign governments; and
 - (C) has jurisdiction over, serves as a forum for coordinating, or otherwise has a role or responsibility for the management of, any land or other natural resource.
- (7) Introduction. -- The term "introduction" means the transfer of an organism to an ecosystem outside the historic range of the species of which the organism is a member.
- (8) Invasion. -- The term "invasion" means an infestation of an aquatic invasive species.
- (9) Invasive species. -- The term "invasive species" means a nonindigenous species the introduction of which into an ecosystem may cause harm to the economy, environment, human health, recreation, or public welfare. The term "invasive species" does not include game species (e.g. trout, salmon, bass, etc.) that have been traditionally introduced by state game and fish agencies to improve fish populations, fishing or recreation.
- (10) Invasive Species Council. -- The term "Invasive Species Council" means the interagency council established by section 3 of Executive Order No. 13112 (42 U.S.C. 4321 note).
- (11) Nonindigenous species. -- The term "nonindigenous species" means any species in an ecosystem that enters that ecosystem from outside the historic range of the species.
- (12) Organism in trade. -- The term "organism in trade" means an organism of a species or

subspecies that has a documented history of being commercially imported into the United States in the period beginning on January 1, 1990, and ending on January 1, 2004.

(13) Organism transfer. -- The term “organism transfer” means the movement of an organism of any species from one ecosystem to another ecosystem.

(14) Pathway. -- The term “pathway” means 1 or more routes by which an invasive species is transferred from one ecosystem to another.

(15) Planned importation. -- The term “planned importation” means the purposeful movement of a species into the territorial limits of the United States.

(16) Regional panel. -- The term “regional panel” means a panel convened in accordance with section 1203.

(17) Species. -- The term “species” means any fundamental category of taxonomic classification, or any viable biological material, ranking below a genus or subgenus.

(18) Task force. -- The term “Task Force” means the Aquatic Invasive Species Task Force established by section 1201(a).

(19) Undesirable impact. -- The term “undesirable impact” means economic, human health, aesthetic, or environmental degradation that is not necessary for, and is not clearly outweighed by, public health, environmental, or welfare benefits.

(20) Waters of the United States. --

(A) In general. -- The term “waters of the United States” means the navigable waters and territorial sea of the United States.

(B) Inclusion. -- The term “waters of the United States” includes the Great Lakes.

TITLE I – CLEAN SPECIES LISTING ACT OF 2004 - SCREENING PROCESS FOR PLANNED IMPORTATIONS OF LIVE AQUATIC ORGANISMS.

Subtitle B of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711 et seq.) is amended by adding at the end the following:

SEC. 1105. SCREENING PROCESS FOR PLANNED IMPORTATIONS OF LIVE AQUATIC ORGANISMS.

(a) In General. -- Not later than 3 years after the date of enactment of the “Clean Species Act of 2004”, no live aquatic organism not in trade shall be imported into the United States without screening and approval in accordance with subsections (c) and (d).

(b) Guidelines. --

(1) In general. -- Not later than 30 months after the date of enactment of the Clean Species Act of 2004, in consultation with regional panels convened under section 1203, States, tribes, and other stakeholders, the Invasive Species Council (in conjunction with the Task Force) shall promulgate guidelines for screening proposed planned importations of live aquatic organisms into the United States that include --

(A) guidelines for minimum information requirements for determinations under subsection (c); and

(B) guidelines for a simplified notification procedure for any additional shipments of organisms that may occur after completion of an initial screening process and determination under subsection (c).

(2) Purpose. -- The purpose of the screening process shall be to prevent the introduction or establishment of aquatic invasive species (including pathogens and parasites of the species) in waters of the United States and contiguous waters of Canada and Mexico.

(3) Factors. -- In developing guidelines under this subsection and reviewing and revising the guidelines under subsection (j), the Invasive Species Council and the Task Force shall consider --

- (A) the likelihood of the spread of organisms by human or natural means;
- (B) organisms that may occur in association with the organism planned for importation including pathogens, parasites, and free-living organisms;
- (C) regional differences in probability of invasion and associated impacts;
- (D) the difficulty of controlling an established population of an aquatic invasive species in the wild; and
- (E) the profile established under section 1108(b).

(c) Categories.-- The screening process shall --

(1) require the identification, to the maximum extent practicable, to the species level and, at a minimum, to the genus level, of live aquatic organisms; and

(2) designate --

- (A) species with high or moderate probability of undesirable impacts to areas within the boundaries of the United States and contiguous areas of neighboring countries, to which the organism is likely to spread; and
- (B) species with insufficient information to determine the risk category based on guidelines issued pursuant to subsection (b)(1)(B).

(d) Evaluation. --

(1) In general. -- Not later than 180 days after the date of promulgation of guidelines under subsection (b), in consultation with regional panels convened under section 1203, States, tribes, and other stakeholders, a Federal agency with authority over an importation into the United States of a live organism not in trade and proposed for importation into the United States shall screen the organism in accordance with guidelines promulgated under subsection (b).

(2) Delegation and authority. --

(A) In general. -- Subject to subparagraph (B), if no agency has authority described in paragraph (1) or an agency delegates the screening to the Director under subsection (h), the Director shall screen the organisms in accordance with subsections (a) and (b).

(B) United States Fish and Wildlife Service. -- The Director may restrict or prohibit the importation of an organism in trade if --

- (i) no other Federal agency has authority to regulate the importation of the organism in trade; and
- (ii) the Director determines, based on an evaluation that is consistent with the screening requirements promulgated under subsection (g), that the organism in trade has a high or moderate probability of an undesirable impact to an area within the boundaries of the United States or a contiguous area of a neighboring country, to which the organism may spread.

(3) Multiple jurisdictions. --

(A) In general. -- Subject to subparagraph (B), if more than 1 agency has jurisdiction over the importation of a live organism, the agencies shall conduct only 1 screening process in accordance with the memorandum of understanding described in subsection (f) (in consultation with National Oceanic and Atmospheric Administrator).

(B) Cultured aquatic organisms. -- The Secretary of Agriculture shall conduct screening of organisms imported to be cultured.

(e) Requirements. -- A Federal agency of jurisdiction, or the Director shall --

(1) restrict or prohibit the importation into the United States from outside the United States of any species that is described in subsection (c)(1);

- (2) prohibit the importation of any species described in subsection (c)(2), unless the importation is for the sole purpose of research that is conducted in accordance with section 1202(f)(2); and
- (3) make a determination under this subsection not later than 180 days after receiving a complete request for permission to import a live aquatic species.

(f) Memorandum of Understanding. --

(1) In general. -- The Director of the United States Fish and Wildlife Service shall enter into a memorandum of understanding with the agencies of jurisdiction regarding the screening requirements of this section.

(2) Contents. -- The memorandum of understanding shall contain, at a minimum --

(A) a description of the relationship between and responsibilities of the agencies of jurisdiction, including a process designating a lead agency in cases in which multiple agencies may have jurisdiction over the screening of an aquatic species;

(B) the process by which the Director will delegate screening duties to and receive delegation from other agencies of jurisdiction; and

(C) the process by which agencies of jurisdiction and the Invasive Species Council will coordinate and share information Required for the screening of species.

(g) Screening Requirements. -- The Director shall promulgate screening requirements consistent with the guidelines promulgated under subsection (b) to evaluate any planned live aquatic species importation (including an importation carried out by a Federal agency) from outside the borders of the United States into waters of the United States that is (1) not otherwise subject to Federal authority to permit the importation; (2) or delegated to the Director by another agency of jurisdiction under subsection (h).

(h) Delegation to Director. -- Any agency with authority over the planned importation of a live aquatic organism may delegate to the Director the screening process carried out under this section.

(i) Catalog of Organisms in Trade. -- Not later than 1 year after the date of enactment of the Clean Species Act of 2004, the Director of the United States Geological Survey and the Director of the Smithsonian Environmental Research Center, in cooperation with agencies with jurisdiction over planned importations of live organisms, shall --

(1) develop and, as necessary, update a catalog of organisms in trade; and

(2) include the list in the information provided to the public pursuant to section 1102(f).

(j) Review and Revision. --

(1) In general. -- At least once every 3 years, the Invasive Species Council, in conjunction with the Task Force, shall use all research and information available to review and revise the screening, guidelines, and process carried out under this section.

(2) Report. -- The Invasive Species Council shall include in its report to Congress required pursuant to section 1201(f)(2)(B) --

(A) an evaluation of the effectiveness of the screening processes carried out under this section;

(B) the consistency of the application of the screening process by agencies; and

(C) recommendations for revisions of the processes.

(k) Prohibitions. --

(1) In general. -- It shall be unlawful to import an organism described in subsection (d), (e), or (g).

(2) Penalties. --

(A) Civil penalty. -- Any person that violates paragraph (1) shall be liable for a civil penalty in an amount not to exceed \$50,000.

(B) Criminal penalties. -- Any person that knowingly violates paragraph (1) is guilty of a class C felony.

- (l) Fees. -- The head of any agency that has jurisdiction over a planned importation of a live organism subject to screening under this Act may increase the amount of any appropriate fee that is charged under an authority of law to offset the cost of any screening process carried out under this section.
- (m) Information. -- A Federal agency conducting a screening process under this section shall make the results of the process available to the public (including international organizations).
- (n) Regulations. -- The Director may issue regulations to implement this section.
- (o) Effect on Other Laws. -- Nothing in this section or any regulation promulgated under this section supersedes or otherwise affects any other provision of Federal or State law.

TITLE II – COORDINATION WITH OTHER PROGRAMS

Coordination With Other Programs.--Section 1202(c) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4722(c)) is amended by adding at the end the following --

(3) Recommendations for lists. --

(A) In general.--The Task Force shall annually recommend to Federal agencies of jurisdiction such additions of aquatic invasive species as the Task Force determines to be appropriate for inclusion on --

- (i) any list of species of wildlife under the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.) (including regulations under such Act); or
- (ii) any list of noxious weeds under the Plant Protection Act (7 U.S.C. 7701 et seq.) (including regulations promulgated under that Act contained in part 360 of title 7, Code of Federal Regulations (or any successor regulations)).

(B) Process. -- The Task Force may use the screening process developed pursuant to section 1105 to identify species pursuant to subparagraph (A).

TITLE III--AUTHORIZATION OF APPROPRIATIONS

Section 1301 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4741) is amended to read as follows:

SEC. 1301. AUTHORIZATION OF APPROPRIATIONS.

(a) In General. -- Except as otherwise provided in this section, there are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 2004 through 2008.

(b) Establishment of Clean Species Lists. -- There are authorized to be appropriated for each of fiscal years 2004 through 2008 --

- (1) \$1,000,000, to be used by the Invasive Species Council to establish screening guidelines under section 1105(b); and
- (2) \$3,500,000, to be used by the Director to promulgate and implement screening requirements under section 1105(g).