List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 247C3 at Parker.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–14672 Filed 6–10–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AE34

Injurious Wildlife Species; Brushtail (*Trichosurus vulpecula*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service adds the brushtail possum (***Trichosurus vulpecula***) to the list of injurious live mammals. By this action, the Service prohibits the importation into or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any live brushtail possum. The best available information indicates that this action is necessary to protect the interests of forestry, human health and safety, and wildlife and wildlife resources from adverse effects that may result from purposeful or accidental introduction and subsequent establishment of the brushtail possum populations in the ecosystems of the United States. Live brushtail possums can only be imported by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits will also be required for the interstate transportation of live brushtail possums currently held in the United States for scientific, medical, educational, or zoological purposes. However, this action prohibits interstate transportation of live brushtail possums currently held in the United States for purposes not listed above.

DATES: This rule is effective July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or kari_duncan@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Summary of Actions Taken and Comments

The Service published a request for information in the January 24, 1996 (61 FR 1893), **Federal Register** as the result of a letter that we received from the Texas Animal Health Commission requesting that the Service prohibit the importation of *T. vulpecula* into the United States. The request for information included the entire *Trichosurus* genus, to ensure that all members of the genus that might pose a threat were covered. We received 11 responses, all indicating the extreme injurious nature of *T. vulpecula.* However, due to limited data on the injurious nature of the other species in the genus, we developed a proposed rule for the brushtail possum only. The proposed rule (64 FR 59149, November 2, 1999) invited comments for 60 days ending January 3, 2000. The Humane Society of the United States (HSUS) submitted the only comment received during this period. The HSUS supported the proposed rule but did not submit additional information as to why brushtail possums should be listed as injurious. Consequently, our decision to develop this final rule is based on the scientific information that we used for the proposed rule.

Description of the Final Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of that law, the Secretary of the Interior is authorized to prescribe by regulation those nonindigenous wild animals or viable eggs thereof, that are deemed to be injurious or potentially injurious to the health and welfare of human beings, the interests of agriculture, forestry, and horticulture, or the welfare of and survival of wildlife or wildlife resources of the United States. The lists of injurious wildlife species are at 50 CFR 16.11–15. By adding brushtail possums to the list of injurious wild mammals, their importation into and transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. No live brushtail possums or progeny thereof, imported or transported under a permit may be sold, donated, traded, loaned, or transferred to any person or institution unless such person or institution has a permit issued by the Director of the Service. The interstate transportation of any live brushtail possum or viable gametes thereof currently held in the United States for any purpose not permitted is prohibited.

Biology

Brushtail possums *(Trichosurus vulpecula)* belong to the Order Diprotodonta, superfamily Phalangeroidea, and family Phalangeridae. They are also known as the common brushtail possum, silver-grey possum, and phalanger. Native to Australia, the brushtail possum is the most familiar and abundant of the Australian possums, frequently cohabiting with humans. Head and body length range from 350 to 550 mm; tail length ranges from 250 to 400 mm. Females weigh between 1,500 and 3,500 grams, and males between 2,000 and 4,500 grams. They are generally silver-grey above, white to pale grey below. They have long, oval ears (50–60 mm); the tail is bushy with a naked area under the tip.

The brushtail possum occurs in most areas of Australia where there are trees, especially open forests and woodlands. A nocturnal animal, it spends the day in a den in a hollow dead branch, tree trunk, fallen log, or even on the ground. In urban areas, almost any dark recess may be utilized, the space between a ceiling and a roof being commonly favored. Although it travels extensively on the ground, it is an arboreal (tree-dwelling) animal, climbing by means of its sharp claws, the opposable first toe of the hindfoot, and a moderately prehensile (grasping) tail. Although their diet consists mainly of vegetation such as leaves, bark, fruits, buds, flowers, fungi, and tree sprouts, brushtail possums may eat some insects, eggs, and small animals (Grzimek's Animal Encyclopedia).

Communication is by sound and scent. Deep guttural coughs and sharp

hisses are frequent, particularly in the breeding season, and extensive use is made of glands under the chin, on the chest and near the anus, to mark areas and define occupancy. Brushtail possums usually live less than 11 years, but a record exists of an individual that lived for 11 years.

Most populations have a major autumn and a minor spring breeding season, but births have been recorded in all months of the year. Females usually begin to reproduce when about 1 year old. Over 90 percent of females breed annually, and in some populations 50 percent may breed in both seasons. A single young is born 17–18 days after copulation, spends 4–5 months in the well-developed pouch attached to one of the two teats and develops rapidly. A further 1–2 months are spent suckling and riding on the mother's back before weaning is completed.

According to the Australian Nature Conservation Agency, brushtail possum meat and fur has been used as a food and clothing source by Australian Aboriginals and more recently, the products have been in high demand in Asian countries (China, Hong Kong, Japan, etc.). Because of their pleasant disposition, brushtail possums have been imported into the United States as pets.

On June 6, 1994, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) published an interim rule (59 FR 29186) prohibiting the importation of brushtail possums and hedgehogs from New Zealand to prevent the introduction of tuberculous infected animals into the United States. The intended effect was to protect domestic livestock from tuberculosis. APHIS published a final rule affirming the interim rule on January 23, 1995 (60 FR 4372). The tuberculosis issue is discussed in more detail below.

This rule adds to the restrictions found in the APHIS regulations (found at 9 CFR 93.701) by expanding the prohibition on the importation of brushtail possums from all countries. It also prohibits interstate movement of these animals.

Factors That Contribute to Injuriousness

Although few cases of brushtail possum ownership in the United States are known, the likelihood of escape, survival, establishment, and spread after escape is high. Between 1837 and 1930, about 200 brushtail possums were released in New Zealand to establish a fur industry. Since that time, they have spread across 95% of New Zealand and the population is around 70 million (Department of Conservation National Possum Plan). Brushtail possums have become ubiquitous, adapting to numerous habitats and elevations, including tree lines, pastures, orchards, and cities, and can be found from sea level to above the snow line in mountains (The Ecological Effects of Possums on the New Zealand Environment). According to *PawPrintOnline.com*, a breeder of brushtail possums, ''In most areas of the United States, brushies can be housed outdoors year-round.'' Brushtail possums have few natural enemies, and although their reproductive rate is low, their populations increase rapidly because they become sexually mature at a young age (Grzimek's Animal Encyclopedia).

Although the diet of brushtail possums consists mostly of leaves from trees and shrubs, they also eat buds, flowers, fruit, ferns, bark, fungi, some insects, eggs, and small mammals (Department of Conservation National Possum Control Plan). Brushtail possums compete with native New Zealand birds for foliage and fruit. By eating the flowers of at least 20 species of forest plants, they rob nectar and berries from several species of birds and other pollinators (bats, insects, *etc.*). Where den sites are available, they compete with hole-nesting birds for cover. Diet requirements and feeding habits are expected to be the same in the United States indicating a high likelihood that brushtail possums will compete with native wildlife for food and habitats.

The likelihood that brushtail possums would have adverse impacts on native wildlife, wildlife resources, and ecosystem balance through habitat degradation and/or destruction is high. They have dramatically altered native plant communities in New Zealand by eating native forests. Tall forests can be turned into scrub and bare ground. Brushtail possums attack the canopy, subcanopy, shrub layer, and ground. They weaken canopies and make them more susceptible to climate extremes, and infection from bacteria, fungi, and insects. Beneath the canopy and along the forest edge, they kill or suppress smaller trees and shrubs (Department of Conservation National Possum Control Plan).

According to P.E. Cowan, possums have colonized virtually all of New Zealand's indigenous forests. Brushtail possums have caused modification and threatened major mortality to broadleaved hardwood forests and have severely damaged pine forests. ''Possums cause four major kinds of damage to pine trees: browsing of terminal shoots of newly planted seedlings, barkstripping and chewing of cambial tissue, breakage of the leader and top whorl of laterals, and cone loss from seed stands after trees mature.'' In New Zealand, damage has been reported on at least eight species of *Pinus* that are native to the United States: *P. ponderosa, P. palustris, P. muricata, P. taeda, P. echinata, P. contorta, P. radiata*, and *P. elliottii* (The Ecological Effects of Possums on the New Zealand Environment).

The likelihood that brushtail possums will have adverse impacts on native wildlife through predation is high. Brushtail possums threaten animal species by preying on them, competing for food, or interfering with nesting sites (Department of Conservation National Possum Control Plan). In New Zealand, brushtail possums have been found to prey on the eggs and chicks of several rare native birds, such as kiwis, kokakos, parakeets, saddlebacks, and pigeons. Ground-dwelling birds in the United States would be particularly vulnerable to predation by brushtail possums.

The likelihood that brushtail possums will have adverse impacts on native wildlife, wildlife resources, and ecosystem balance through the transfer of pathogens is high. Bovine tuberculosis (*Mycobacterium bovis*) is one of New Zealand's more serious health problems (70 Million Reasons for Concerted Action Against Possums). Brushtail possums are vectors for bovine tuberculosis and play a major role in keeping it in the environment. *M. bovis* can survive in open fields for days, in protected areas such as possum dens for 3 weeks, and in possum carcasses for 6 weeks (Annual Report from the Possum/Bovine Tuberculosis Control National Science Strategy Committee). Bovine tuberculosis usually concentrates in the lungs, thus making disease transmission through respiration a concern. *M. bovis* can also spread through urine, feces, mucus, and sinus drainage, making areas containing diseased possums highly contaminated (New Zealand Brushtailed Possums May Spread Bovine Tuberculosis, U.S. Department of Agriculture News, Report No. 0344.94). Bovine tuberculosis can be contracted through breathing respiratory excretions from infected animals or eating or drinking contaminated items. Animals susceptible to bovine tuberculosis include cattle, deer, elk, pigs, goats, sheep, cats, dogs, rabbits, ferrets, stoats, and hedgehogs (National Tb Strategy, Animal Health Board, and National Pest Management Strategy for Bovine Tb). The consequences of bovine tuberculosis in the United States would probably be more devastating than in

New Zealand because of the richer mammalian fauna thus resulting in a wider distribution of the pathogen (Director, Madison Wildlife Health Lab, USGS–BRD).

The likelihood of impacts on human beings, agriculture, and forestry is high. Historically bovine tuberculosis has been a significant human health problem. Humans are able to contract the disease by consumption of unpasteurized milk or by direct contact with infected animals or carcasses (National Pest Management Strategy for Bovine TB). In New Zealand, bovine tuberculosis spread by brushtail possums threatens the agricultural trade, especially exports of meat and dairy products (Attacking the Possum Plague). In the United States, cattle and deer farmers and industries based on beef, dairy, or venison products would be affected. Brushtail possums also pose a risk to the forestry resources of the United States. As stated earlier, brushtail possums have dramatically altered forests in New Zealand. Eight species of pine trees native to the United States are particularly vulnerable to damage from brushtail possums.

Factors That Reduce or Remove Injuriousness

Few options are currently available for controlling brushtail possum populations. Eradication efforts in New Zealand have failed, so efforts have focused on managing established populations and controlling the spread to new locations. Several control methods are available in New Zealand: aerially sown compound 1080 poison (sodium monofluoroacetate), ground hunting (commercial hunters, bounties paid for skins, baiting), and trapping. The main advantages of aerially spread 1080 poison baits are that the method can be used over very large areas, its costs are little affected by the terrain, and all possums are put at risk simultaneously over a short period. Its main disadvantages are that wet weather may put the program at risk, and that 1080 poses a high risk of secondary poisoning to canids and may kill other non-target animals such as small birds, insects, and invertebrates (Department of Conservation National Possum Control Plan). Additionally, although 95% of the possums that eat the bait die, their sense of smell allows them to detect the poison and shy away from it. The use of compound 1080 in the United States is restricted to very controlled conditions. Biological control methods (sterility, possum-specific viruses) are being investigated, but to date, none have proven to be effective (Attacking the Possum Plague).

According to APHIS Wildlife Services, shooting and trapping are the only methods available for controlling *Didelphis virginiana*, the Virginia opossum (Jackson, 1994). There are no registered repellants, toxicants, or fumigants available in the United States. Since the brushtail possum has been compared to the Virginia opossum, trapping and shooting would likely be the only methods available for controlling the brushtail possum.

The ability to prevent and control the spread of pathogens is dependent upon controlling the spread of the vectors. In New Zealand, endemic *M. bovis* infection in feral populations of Australian brushtail possums is considered an important reservoir for repeated episodes of tuberculosis infection in cattle. As mentioned above, efforts to eradicate brushtail possums in New Zealand have failed. It has gradually been accepted by New Zealand disease control authorities that in areas where possum tuberculosis is endemic, eradication of tuberculosis is not possible. The consequences of bovine tuberculosis in this country would probably be more devastating than in New Zealand because of the richer mammalian fauna.

Because brushtail possums may transmit pathogens to humans, livestock, and wildlife; damage or destroy native forests; prey upon, compete for food, or displace native wildlife; and because control methods are limited, the Service has determined that the brushtail possum is potentially injurious to human beings, forestry and agriculture interests, and the wildlife and wildlife resources of the United States.

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action.

(a) It will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required. The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture has developed and implemented regulations prohibiting the importation of brushtail possums from New Zealand because they carry bovine tuberculosis. This rule increases restrictions over and above the Department of Agriculture regulations (9 CFR 93.701) by expanding this prohibition to all countries. Consequently, economic analysis is restricted to the effect that these additional importation restrictions will have on the American economy.

The brushtail possum is abundant in Australia, including Tasmania. They have been hunted in Tasmania since the 1920's for fur. The fur market has declined in recent years, and the possum industry has been selling skins and meat to Taiwan and China. World trade in brushtail possums mainly focuses on meat mostly going to Asian markets. Between January 1, 1999, and December 31, 2001, only two live brushtail possums were imported into the United States at a declared value of $972 and one live brushtail possum was exported at a declared value of $200. Therefore, this rule should have little, if any, measurable economic effect on the U.S. economy and will not have an annual effect equaling $100 million or more for a significant rulemaking action.

A major, though not quantified, effect of this rule is the reduced risk of substantial agricultural and environmental damage in the United States including the spread of *M. bovis*, that could occur if brushtail possums escape from captivity. Risk reduction is a benefit of this rule that cannot be quantified with existing data. However, the damage caused by brushtail possums in New Zealand is well documented.

(b) This rule does not create inconsistencies with other agencies' actions. It will expand the prohibition established by APHIS for importation from New Zealand to importation from all countries because of the potential of brushtail possums carrying *M. bovis* and the damage they could inflict on native ecosystems.

(c) This rule does not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients and does not affect entitlement programs.

(d) It does not raise novel legal or policy issues. No previous listings of wildlife as injurious in the past have raised legal or policy concerns. Because only two live brushtail possums were imported and only one live brushtail possum was exported between 1996 and 2001, this rule is not expected to raise legal, policy, or any other issues.

This rule does not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Neither a Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required. Only two live animals were imported and only one live animal was exported over a five-year period; therefore, no small industry within the United States will be significantly affected if importation and

interstate movement of brushtail possum is not allowed.

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not have an annual effect on the economy of $100 million or more. Two brushtail possum breeders advertise on the Internet. USDA–APHIS records indicate that there may be as many as 20 breeders in the United States. Only two live brushtail possums were imported into the United States between 1996 and 2001 at a declared value of $972 and only one live brushtail possum was exported during that same period. The Service believes that a market for live brushtail possums has not been established in the United States. Consequently, there are no measurable economic effects on small businesses.

This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The low number of brushtail possums imported into the United States indicates that listing the brushtail possum as injurious would not have significant adverse effects.

The rule does not significantly or uniquely affect small governments, and a Small Government Agency Plan is not required. The rule will not impose a cost of $100 million or more in any given year on local or State government or private entities.

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will impose few requirements or limitations on private property use. While interstate transport of brushtail possums already within the United States will be prohibited, continued possession of these animals is not restricted.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federal Assessment.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. This rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

This rule contains information collection activity for special use permits. The Fish and Wildlife Service has OMB approval for the collection under OMB Control Number 1018–0012. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not required. The action is categorically excluded under the Departmental NEPA procedures (516 DM 2, Appendix 1.10), which apply to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is intended to prevent the accidental or intentional introduction of brushtail possums and the possible subsequent establishment of populations of these animals in the wild, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the Division of Environmental Quality (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authority

The Service is issuing this final rule under the authority of the Lacey Act (18 U.S.C. 42).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we amend Part 16 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

PART 16—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

2. Amend § 16.11 by revising paragraph (a) to read as follows:

§ 16.11 Importation of live wild mammals.

(a) The importation, transportation, or acquisition is prohibited of live specimens of: (1) Any species of so-called ''flying fox'' or fruit bat of the genus *Pteropus*; (2) any species of mongoose or meerkat of the genera *Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos*, and *Suricata*; (3) any species of European rabbit of the genus *Oryctolagus*; (4) any species of Indian wild dog, red dog, or dhole of the genus *Cuon*; (5) any species of multimammate rat or mouse of the genus *Mastomys*; (6) any raccoon dog, *Nyctereutes procyonoides*; and (7) any brushtail possum, *Trichosurus vulpecula*: Provided, that the Director shall issue permits authorizing the importation, transportation, and possession of such mammals under the terms and conditions set forth in § 16.22.

* * * * *

Dated: May 22, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–14608 Filed 6–10–02; 8:45 am]

BILLING CODE 4310–55–P