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# Comment from Center for Biological Diversity, the Humane Society of the United States, and Humane Society International

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**[EXTERNAL] Comment on FWS Forms 3-177 and 3-177a (OMB Control Number 1018–0012)**

Tanya Sanerib &lt;TSanerib@biologicaldiversity.org&gt;

Wed 7/5/2023 9:31 PM

To:FWHQ Info\_Coll &lt;info\_coll@fws.gov&gt;

Cc:Nicholas Arrivo &lt;narrivo@humanesociety.org&gt;

 1 attachments (193 KB)

Center HSUS HSI Comments re FWS Form 3-177 June 2023 final.pdf;

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Dear Ms Baucum,

Attached are comments from the Center for Biological Diversity, the Humane Society of the United States, and Humane Society International in response to 88 Fed. Reg. 29,145 (May 5, 2023). Please contact us if you have any questions about this submission and thank you for your attention to this matter.

Sincerely,  
Tanya Sanerib

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July 5, 2023

***Via Electronic Mail & Regulations.gov***

Docket No. FWS–HQ–LE–2023–0049

Madonna L. Baucum,

Service Information Collection Clearance Officer,

U.S. Fish and Wildlife Service

MS: AMAD-ARM-PPM

[Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov)

**RE: Information Collection: FWS Forms 3-177 and 3-177a (OMB Control Number 1018–0012). 88 Fed. Reg. 29,145 (May 5, 2023).**

Dear Ms. Baucum and Others Whom It May Concern,

On behalf of the Center for Biological Diversity, the Humane Society of the United States, and Humane Society International and our millions of members, constituents, and online activists, we submit these comments in response to the U.S. Fish and Wildlife Service’s (“the Service”) Notice regarding Agency Information Collection Activities, Declaration for Importation or Exportation of Fish or Wildlife. 88 Fed. Reg. 29,145 (May 5, 2023). The notice requests comments on the data collection in the Service’s Forms 3-177 and 3-177a.

As the Service is well-aware, the Endangered Species Act (“ESA”) provides that “[i]t is unlawful for any person importing or exporting fish or wildlife [with limited exceptions] or plants to fail to file any declaration or report as the Secretary deems necessary.” 16 U.S.C. § 1538(e). The Service’s regulations then specify that “importers or their agents must file with the Service a completed Declaration for the Importation and Exportation of Fish or Wildlife (Form 3-177) . . . upon the importation of any wildlife.” 50 C.F.R. § 14.61. Form 3-177 requires the submission of basic, non-commercial wildlife import and export data, including species’ scientific and common name, country of origin, quantity and unit, date, purpose, and wildlife description among other data. This information is then inputted into the agency’s Law Enforcement Management Information System (“LEMIS”) database.

As requested by the Service, below, we address: how the information is necessary for the Service’s functions; ways to enhance the quality, utility, and clarity of the information to be collected; how the agency can minimize the burden of the collection of information; and provide suggestions for clarifications and corrections on the form.

**A. Collection of the Information is Critical for the Service to Conduct its Mandatory Duties under U.S. and International Law**

The information submitted on Form 3-177 is absolutely critical to the proper functioning of the Service. As the Service states in its notice, the data allow the Service to ensure that the

import and export of wildlife is compliant with core wildlife protections laws, including the ESA, Convention on International Trade in Endangered Species (“CITES”), the Migratory Bird Treaty Act, the Lacey Act, the Wild Exotic Bird Conservation Act, the Marine Mammal Protection Act, and many other laws, as well as enabling the agency to maintain records of wildlife imports and exports. 88 Fed. Reg. at 29,145. The information is used by the agency for law enforcement purposes, for reporting under the CITES treaty and other laws, and benefits the agency in many ways in terms of meeting its mission to conserve fish and wildlife and enforce related laws.

CITES also requires the United States to collect and disclose import and export data. The Convention states that “Each Party shall maintain records of trade in specimens of species [listed under CITES] which shall cover: . . . the names and addresses of exporters and importers,” “the States with which such trade occurred,” “the numbers or quantities and types of specimens, names of species . . . and, where applicable, the size and sex of the specimens in question.” CITES, Article VIII(6). The information must be submitted to CITES on an annual basis. CITES, Article VIII(7)(a).

The information is also critical for the agency, the media, conservationists, scientists, and the public more generally to understand how much trade is occurring in individual species to assess potential threats to those species from trade and the risks of pathogen spillover or transmission related to species trade. Collection of the data also allows for the monitoring of trends in trade both by species and from range countries (or to consumer countries), among other uses. The collection of this information is essential for the Service to conduct its duties under our wildlife laws and important for the public’s understanding of how U.S. trade affects species.

## **B. How to enhance the quality, utility, and clarity of the information collected**

We have several recommendations for enhancing the information collected to ensure it adequately serves its role.

First, the Service should be clear that given the important uses for the collected data that it will be disclosed under the Freedom of Information Act via the LEMIS database. We suggest revisions to the language on the Form to make this clear:

The information on Form 3-177, except personal identifiable information, may will automatically be subject to disclosure disclosed including under the Freedom of Information Act (FOIA; 5 U.S.C. 552). Pursuant to the FOIA, the Service may withhold personal identifiable information (such as street addresses, emails or fax numbers or other information that otherwise reasonably falls under FOIA Exemptions 6 and 7(C)). confidential commercial or financial information may be withheld if, in the Service’s view, certain criteria are met. For Form 3-177, the Service only considers information in field 19b (the "Applicable Field") as potentially confidential commercial or financial information. the information collected is not confidential commercial or financial information. To the extent an organization, business, or individual operating as a business believes any of the Applicable Field information that it is submitting is confidential commercial

~~information, that entity (the “submitter”) should check the appropriate box on the form and be prepared to, upon request by the Service when the Service has received a FOIA request seeking this Applicable Field information, provide a justification that explains the nature of the information and why it should be withheld under Exemption 4 of the FOIA, with special attention to the submitter’s confidentiality practices. The U.S. Fish and Wildlife Service will retain information from Form 3-177 for a minimum of 5 years.~~

We recommend these changes so that the Service can routinely make the LEMIS data available to requestors without having to engage in an extensive and unnecessary notice submitter review process.<sup>1</sup> FOIA expressly requires that the Service “shall” promptly make requested records available to the public, unless those records fall within one of FOIA’s narrow exemption. 5 U.S.C. § 552(a)(3). FOIA carries a “strong presumption in favor of disclosure.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). When agencies announce a policy of disclosure or/and discount the confidential or commercial nature of information, Exemption 4 has been found not to apply. *See, e.g., Ctr. for Investigative Reporting v. U.S. DOL*, 470 F. Supp. 3d 1096, 1114 (N.D. Cal. 2020); *Ctr. for Investigative Reporting v. DOL*, No. 18-cv-02414-DMR, 2020 U.S. Dist. LEXIS 98329, at \*11-16 (N.D. Cal. June 4, 2020); *Humane Soc’y Int’l v. U.S. Fish & Wildlife Serv.*, Civil Action No. 16-720 (TJK), 2021 U.S. Dist. LEXIS 59429, at \*2 (D.D.C. Mar. 29, 2021); *WP Co. LLC v. U.S. SBA*, 502 F. Supp. 3d 1, 16-17 (D.D.C. 2020).

Second, it is important to ensure that the Notices on the back of Form 3-177 maintain that submission of the specified information is mandatory. We urge the Service to further amend the Notice at point (3) to state that “The U.S. Fish and Wildlife Service *will* deny you permission to import or export wildlife if you fail to provide all information requested on Form 3-177.” The Service’s regulations already require that importers or their agents “must file . . . a *completed* Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177),” 50 C.F.R. § 14.61 (emphasis added). This is consistent with the ESA. 16 U.S.C. § 1538(e). Given the critical nature of this data to the operations of the Service, the agency must deny any imports or exports for which the submitter has not provided all the requested information.

Specifically, the full scientific and common name of each species imported or exported *must* be both provided by the importer/exporter and included in the LEMIS database. In our experience working with the data generated from Form 3-177, often importers and exporters fail to provide the full species name on the form, providing only the genus or sometimes only the

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<sup>1</sup> Should the Service nevertheless decide to offer the option of withholding field 19b (“the Applicable Field”), then we suggest the following additions to the Form to ensure the agency receives sufficient information when the Form is submitted:

To the extent an organization, business, or individual operating as a business believes any of the Applicable Field information that it is submitting is confidential commercial information, that entity (the “submitter”) should check the appropriate box on the form and be prepared to, upon request by the Service when the Service has received a FOIA request seeking this Applicable Field information, provide a justification that explains the nature of the information and why it should be withheld under Exemption 4 of the FOIA, with special attention to the submitter’s confidentiality practices. If the box is not checked or an inadequate justification is submitted, the Applicable Field information will be released.

common name. The species name is one of the most critical components of the data collected, as different restrictions apply depending on the species identified and trade impacts on species cannot be fully assessed without species specific data. We urge the Service to clearly state on the Form that the full scientific name, including both genus and species, is required for the shipment to clear.

Further, the Service's current practice appears to allow importers of marine aquarium tropical fish to not specify the species or genus upon import. Instead, importers denote the species name as "MATF" or "FWTF." Failure to identify the species clearly violates the Service's regulations and the whole point of submitting a declaration. We strongly urge the Service to clearly state that the genus and species is absolutely required, including of marine aquarium tropical fish.

Finally, in reviewing import/export data, often submitters only fill out the number of cartons and fail to denote the actual quantity of specimens imported. Form 3-177a should clarify that quantity is required, in addition to the number of cartons.

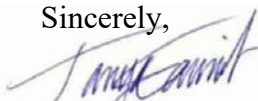
### **C. Minimizing the burden of collecting and sharing the information**

The eDecs system and the forms with the suggestions noted above will provide clear instructions for submitters of the information. Unfortunately, the Service's recent application of FOIA Exemption 4 to the data being collected has resulted in an incredibly onerous system for both data submitters and the Service. For this reason, as well, we suggest the above changes to the form.

### **Conclusion**

Thank you for the opportunity to comment on the information collected on Forms 3-177 and 3-177a. The information is critical for the Service to implement its mandate under our wildlife conservation laws, combat trafficking and other legal violations, and meet its recordkeeping and reporting obligations. The information is also critical for the public to understand U.S. wildlife trade and demand and the role this trade plays in biodiversity loss, pathogen spillover and transmission, and illegal activities.

Sincerely,



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