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Relationship of employee’s work to operations on the specified aquatic products.

It is also necessary to the application of the exemptions that the operation of which the employee’s work is a part be performed on the marine products named in the Act. Thus the operations described in section 13(a)(5) must be performed with respect to “any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life.”  The operations enumerated in section 13(b)(4) must be performed with respect to “any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by-product thereof.”  Work performed on products which do not fall within these descriptions is not within the exemptions (Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Mitchell v. Trade Winds, Inc., 289 F. 2d 278; Walling v. Haden, 153 F. 2d 196).

§ 784.108 Operations not included in named operations on forms of aquatic “life.”

Since the subject matter of the exemptions is concerned with “aquatic forms of animal and vegetable life,” the courts have held that the manufacture of buttons from clam shells or the dredging of shells to be made into lime and cement are not exempt operations because the shells are not living things (Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Walling v. Haden, 153 F. 2d 196, certiorari denied 328 U.S. 866).  Similarly, the production of such items as crushed shell and grit, shell lime, pearl buttons, knife handles, novelties, liquid glue, isinglass, pearl essence, and fortified or refined fish oil is not within these exemptions.

§ 784.109 Manufacture of supplies for named operations is not exempt.

Employment in the manufacture of supplies for the named operations is not employment in the named operations on aquatic forms of life.  Thus, the exemption is not applicable to the manufacture of boxes, barrels, or ice by a seafood processor for packing or shipping its seafood products or for use of the ice in its fishing vessels.  These operations, when performed by an independent manufacturer, would likewise not be exempt (Dize v. Maddix, 144 F. 284 (C.A. 4), affirmed 324 U.S. 667, and approved on this point in Farmers’ Reservoir Co. v. McComb, 337 U.S. 755).