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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

RIN 1018-AB49

Importation, Exportation, and Transportation of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the U.S. Fish and Wildlife Service (Service) regulations providing for uniform rules and procedures for the importation, exportation, and transportation of wildlife. Several definitions are added and amended. The Service's exception to the designated port of entry requirement for wildlife products or manufactured articles worn as articles of clothing or contained in accompanying personal baggage is amended. The exceptions to the import declaration requirements and export declaration requirements are also amended. The Service minimum age requirement for certain antique articles, other than scrimshaw, imported into the United States is changed. The Service is also revising its clearance requirements and its refusal of clearance requirements. The Service's import declaration filing requirements are also changed.

Changes are also made in the marking requirements for containers used to ship fish or wildlife. Further changes are made in the import and export requirements and fee schedules and the exceptions to license requirements. In addition to the above changes, the non-standards fee schedule in part 13 for an import/export license is amended. Finally, the Service will allow the importation and exportation of dead, preserved, dried, or embedded scientific wildlife specimens by accredited scientists or accredited scientific institutions engaged in taxonomic or systematic research at any U.S. Customs port, or by way of the international mail.

EFFECTIVE DATE: This rule is effective July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of Interior, Washington, DC 20240, Telephone Number (703) 358-1949.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) has oversight responsibilities under statutory and regulatory authority to regulate the importation, exportation, and transportation of wildlife. The Service, consistent with this authority, has established an inspection program to oversee the importation, exportation, and transportation of wildlife and wildlife products. The Service, in support of its program activities, has promulgated regulations, subject to exemptions and permitted exceptions, restricting the importation and exportation of wildlife and wildlife products to certain designated ports, border ports, and special ports enumerated within the Code of Federal Regulations. Service regulations governing the importation, exportation, and transportation of wildlife are codified in 50 CFR part 14 and are implemented through the efforts of Service Special Agents and Wildlife Inspectors, and with the essential support, cooperation, and assistance of the U.S. Customs Service (Customs) and the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and other cooperating agencies.

The Service is making the following changes to the Importation, Exportation, and Transportation of Wildlife regulations in part 14. A new section § 14.4, entitled "Definitions", is being added to include several new definitions. In adding these new definitions, the Service's intent is to provide greater uniformity in the interpretation of part 14. This section, includes a definition for the term "commercial" to explain when the commercial intent of a shipment becomes presumptive. The effect of this definition is to clarify when a wildlife shipper is required to obtain an import/export license, and when the personal baggage exception does not apply. A definition is also added for the term "export" to delineate when the filing of an export declaration and clearance by a Service Officer will be required. The term "accompanying personal baggage" is also defined to eliminate any ambiguity as to when hand-carried items and checked baggage will be regarded by the Service as an export or import. The meaning of the term "domesticated animal" is defined to distinguish such animals from wildlife.

The Service, in order to clarify its requirements, is defining the terms "Accredited scientific institutions" and "Accredited scientist." The term "Accredited scientific institution" is defined to include any public museum,

public zoological park, accredited institution of higher education, accredited member of the American Zoo and Aquarium Association, accredited member of the American Association of Systematic Collections, or any State or Federal government agency that conducts biological or medical research. The term "Accredited scientist" is defined to include any individual associated with, employed by, or under contract to and accredited by an accredited scientific institution for the purposes of conducting biological or medical research, and whose research activities are approved and sponsored by the scientific institution granting accreditation.

In addition to the above changes, the term "worn" in § 14.15 is being removed and replaced with term "used" in order to clearly define when wildlife products are included within the personal baggage and household effects exception to the designated port requirements.

The Service is making several administrative corrections within the text of the regulations. The erroneous references to § 14.93(d) in § 14.82(a)(2) and the erroneous reference to § 14.93(d)(1) in § 14.93(c)(5) are being changed to read § 14.93(c) and § 14.93(c)(1), respectively. These citations refer to the requisite record requirements applicable to holders of an import/export license.

A reference to the permit requirements of part 23 is included within several sections of part 14. The requirements of part 23 implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The following provisions are being changed to include references to part 23: At § 14.21, the exceptions to the Service's license requirements for shellfish and fishery products; at § 14.55, the exceptions to Service wildlife clearance requirements stating when wildlife and wildlife products may be imported without clearance; at § 14.62(a), the exceptions to the import declaration requirements stating when a Service import declaration (Form 3-177) is not required; at § 14.64(a), the exception to export declaration requirements stating when a Service export declaration (Form 3-177) is not required; and at § 14.92(a)(1) and 14.92(a)(2), the exceptions to license requirements stating when wildlife may be imported or exported without the procurement of a Service import/export license.

The Service is changing the age minimum in § 14.22 for certain antique articles to be consistent with changes in the Endangered Species Act. The

Service is also adding in § 14.21(a)(2) an exception to the designated port requirements for live aquatic invertebrates of the Class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof exported for purposes of propagation, or research related to propagation. A designated port exception is also added at § 14.21(b) for pearls imported or exported for commercial purposes.

The Service is also facilitating the importation or exportation of dead, preserved, dried, or embedded scientific taxonomic or systematic collection specimens, or parts thereof, by accredited scientists or accredited institutions by making several changes in its current regulations. The Service is adding a new section, at § 14.24, to be entitled "Scientific Specimens." This new section provides that dead, preserved, dried, or embedded taxonomic or systematic collection specimens may be imported or exported by accredited scientists or scientific institutions by way of any Customs port or to be shipped through the international mail. This exception, however, does not apply in situations where the wildlife being imported or exported requires a permit under any of the Service regulations established in 50 CFR parts 16, 17, 18, 21, 22, and 23 that set forth the Service regulations implementing: the Lacey Act, 18 U.S.C. 42; the Endangered Species Act (ESA), 16 U.S.C. 1531-1543; the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361-1407; the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703-712; the Bald and Golden Eagle Protection Act (Eagle Act), 16 U.S.C. 668; and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), respectively. In addition, this exception does not apply to any specimen or part of any specimen taken as a result of sport hunting. The term "sport hunting" will be given its common and ordinary meaning.

The requirements for the clearance of wildlife, at § 14.52, and the refusal of clearance of wildlife, at § 14.53, are being changed to show the applicability of these sections to both exported and imported wildlife. The provisions of § 14.52 are being changed to specifically state, in both import and export situations, the requirements of presentation of wildlife for clearance and the requirement of clearance of wildlife by a Service officer prior to export or prior to U.S. Custom Service release of an importation.

The Service's refusal of clearance provisions at § 14.53 are also being changed to require the identification of

wildlife by species or subspecies name. This change is intended to alleviate the confusion often caused by the use of common names. This section is also being changed to include as an additional basis for the refusal of clearance the failure to pay an assessed penalty levied upon an importer or exporter under part 11. Another significant change being made to § 14.53 is the establishment of a formal detention process for wildlife or wildlife products, similar to that of the Customs Service. The detention procedure is necessary in order for the Service to determine the applicability of state or foreign law relating to imported or exported wildlife, and/or to ascertain the validity of foreign permits.

In order to ensure humane and expeditious inspection and handling of shipments of wildlife, the Service is revising § 14.54 to include a provision requiring that the Service be notified at least 48 hours prior to the "estimated time of arrival" of live or perishable shipments of wildlife or wildlife products. The Service is to be similarly notified when wildlife inspection is requested to be accomplished upon arrival or when wildlife is to be inspected prior to export.

In general, all wildlife imported into the United States must be cleared in accordance with § 14.52 by a Service officer prior to its release from detention by Customs officers. Clearance by a Service officer may be obtained only at designated ports, border ports, special ports, or any port where importation is authorized by permit, unless the wildlife is otherwise exempted from such requirement. The Service's existing exceptions to clearance requirements for certain wildlife are set forth in § 14.55. The Service is amending § 14.55 by adding a new paragraph at § 14.55(d) providing an additional exception to the Service clearance requirements for dead, preserved, dried, or embedded specimens or parts thereof imported or exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes.

The regulations concerning the requirements of the Service Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife, in § 14.61 are being changed to include changes brought about by the U.S. Customs Automated Commercial System (ACS) and the Automated Broker Interface (ABI) electronic entry system, and to clarify the requirement of filing an import declaration. Changes in Customs entry system allow entry documents to be filed electronically by an authorized Customs broker using the

electronic entry system. The provisions of § 14.61 require that a completed Declaration for Importation and Exportation of Fish and Wildlife (Form 3-177) be filed with the Service when clearance is requested. A Declaration for Importation and Exportation of Wildlife does not have to be filed, however, for certain categories of wildlife provided an exception under § 14.62, entitled "Exceptions to Import Declaration Requirements." The Service is amending § 14.62 by revising § 14.62(c) and adding a new paragraph at § 14.62(d) to provide an additional exception to the import declaration requirements. New 14.62(d) provides that a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3-177) does not have to be filed at the time of importation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, imported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes. Instead, Form 3-177 must be filed within 180 days of importation with the appropriate Assistant Regional Director for Law Enforcement in the Region where the importation occurs. The specimens must be identified to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and the country of origin must be declared. This exception to the import declaration requirements is limited to exchanges made by accredited scientists or accredited scientific institutions and does not apply to any specimens or parts thereof taken as a result of sport hunting. In addition, this exception does not apply in situations where the wildlife being imported requires a permit under any of the Service regulations established in Title 50 CFR parts 16, 17, 18, 21, 22, and 23, or in situations involving non-accredited scientists or institutions.

The Service's exceptions to import requirements in § 14.62 also are being changed to exclude, in addition to articles intended for sale, articles or samples used as exhibits to solicit sales. In addition, § 14.62 is being revised to remove the incorrect reference to an obsolete Customs Service form.

Section 14.63 sets forth the requirement that a completed Declaration of Importation and Exportation of Fish or Wildlife (Form 3-177) must be filed with the Service prior to the export of any wildlife. Certain exceptions to this export declaration requirement are provided in § 14.64. The Service is amending § 14.64 by adding a new paragraph at § 14.64(b)(3) to provide an additional exception to

the Service's export declaration requirements. This exception will provide that a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3-177) does not have to be filed at the time of exportation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes. This exception, however, will not apply in situations where the wildlife being exported requires a permit under any of the Service regulations established in Title 50 CFR parts 16, 17, 18, 21, 22, and 23, or in situations involving non-accredited scientists or institutions. A Form 3-177 must be filed, however, within 180 days of exportation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the exportation occurs. The specimens must be identified to the not accurate taxonomic classification reasonably practicable using the best available taxonomic information, and the country of origin must be declared. This exception to the export declaration requirements will be limited to exchanges made by accredited scientists or accredited scientific institutions and will not apply to any specimens or parts thereof taken as a result of sport hunting.

In § 14.64(a) the Service is adding an additional exception to the export declaration requirements for live aquatic invertebrates of the Class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof exported for the purposes of propagation, or research related to propagation. The word "live" has been added to this exception to more accurately reflect the Service's intent of applying to live specimens only. The Service is also restating the exceptions to the export declaration requirements under § 14.64(b)(1) and § 14.64(b)(2) by excluding, in addition to wildlife articles intended for sale, articles or samples used as exhibits to solicit sales.

Changes are also being made in the marking requirements of § 14.81, and the alternatives and exceptions to the marking requirements in § 14.82, to add provisions requiring the conspicuous marking of containers or packages to indicate when the contents are venomous species. In making this proposal, the Service hopes to prevent injuries. The Service is also revising § 14.81 to require that wildlife shipments be accompanied with an accurate and legible list of the contents

by scientific species name and the number of each species.

Section 14.91(c) establishes that persons engaged in certain enumerated activities are required to hold an import/export license. The provisions of this section are being changed and amended to reduce any ambiguity and to require persons who commercially import or export wildlife in the form of food products taken from populations of non-domesticated animals to be licensed. Sections 14.92(a)(5) and 14.92(a)(6) are being added to include within the exceptions to the license requirements an exception for live aquatic invertebrates of the Class Pelecypoda, (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof exported for purposes of propagation, or research related to propagation, and for pearls imported or exported for commercial purposes. Sections 14.92(b)(1) and 14.92(b)(2) are being amended to limit the existing exception to the import/export license requirement for common carriers and custom house brokers to instances where they are acting as transporters or agents and not as the importer or exporter of record.

Inspection and License Fees

Inspectors working at designated ports of entry are vested with the authority by statute and regulation to undertake the physical inspection and identification of wildlife shipments and to examine all associated wildlife shipment documentation for sufficiency. Service uniform import export user fee schedules are currently set out at 50 CFR 14.93(f). With some exceptions, these inspection procedures are required for all shipments of wildlife regardless of value, size of shipment, or variety of regulated wildlife species, and therefore, are equivalent in their demands upon work units of the Service. Because of the nature of inspections and the administrative support required, a direct correlation between the value of wildlife shipments and the operating costs incurred by the Service in inspection of wildlife cannot be made. The Service, therefore, has historically assessed user fees according to standardized schedules codified in the Code of Federal Regulations and has avoided as impracticable the levying of fees based solely upon the value of wildlife shipped.

Since 1988 there have been four studies of the Service's import/export user fee policies: A 1988 report prepared by the Service, Division of Finance, of findings and recommendations on review of Law

Enforcement Management Information System and Import/Export Fee Billing and Collection System; a 1988 user charges and collection report by the Department of Interior, Office of the Inspector General; a 1991 Law Enforcement Functional Analysis Review prepared by a fish and Wildlife Service Functional Analysis Review Team; and a 1992 draft of the CITES Implementation Study, prepared by Traffic, U.S.A., a wildlife trade monitoring group associated with the World Wildlife Fund. One recommendation consistently made in these studies is that the Service should change its user fee policies and rates to recover the full cost of services provided to individuals and businesses. The recommendation was also made that the Service license and charge user fees to all commercial importers and exporters of wildlife and wildlife products. The Service is therefore adjusting its fees for certain activities in order to recover the actual costs of the services provided for all commercial import/export activities. An analysis of import/export data for the three most recent years for which complete data is available from the Law Enforcement Management Information System database shows that the Service is only recouping about \$2 million annually of the total wildlife inspection budget of \$4.35 million. Thus, approximately 45 percent of the total cost of the Service's wildlife inspection program is recovered through the current user fees rates.

Consequently, the Service is adjusting its fee schedules in order to recoup the full cost of the import/export inspection program. The new fee schedules are being moved to a new section, § 14.94, entitled "Fees." First, the Service is requiring all commercial importers and exporters of wildlife and wildlife products to obtain an import/export license without regard to the total value of wildlife or wildlife products imported or exported each year. Thus, the Service is eliminating the yearly value exception in § 14.92(b)(6). This is a change from the current system in which only commercial importers/exporters who import or export more than \$25,000 in wildlife products annually have been required to obtain a license. Second, the Service is reducing the cost of an import/export license from the present rate of \$125 per year to \$50 per year. Third, the Service is increasing the fees charged at designated ports in order to cover the full cost of the inspection services provided. The present inspection fee has been \$25 since 1986. The Service's analysis indicates that the average cost

to the Service to process a shipment is approximately \$55 per shipment. Therefore, the Service is increasing the cost of this fee to \$55 per shipment to more realistically recover costs. Fourth, the Service is increasing the administrative fee charged at non-designated ports from \$25 to \$55, in addition to an hourly minimum fee, to recover its actual costs and to make this fee consistent with the increase in the designated port inspection fee. The Service believes these adjustments in the fee rates and applications are reasonable and fair in light of the actual demands upon limited Service resources.

The Service will make substantive changes to Title 50 CFR part 13 at a later time. The Service has changed the non-standard fee schedule in § 13.11(d)(4) to be consistent with the changes made to part 14.

Summary of Comments and Information Received

On Wednesday, September 14, 1994, the Service published, in the Federal Register (59 FR 47212) a proposed rule revising Title 50 CFR parts 13 and 14. In response to this notice, the Service received a total of 568 comments from the public. These included: 14 from academies, 13 from associations, 30 from companies, 11 from congressmen, 106 from museums, 28 from societies, 17 from states, 107 from citizens, 163 from universities, and 70 from miscellaneous other groups. Several of the comments received by the Service in response to the proposed rule were either unrelated to the proposed changes or resulted from lack of understanding of the current regulation, and are not discussed below.

During the comment period, the Service received numerous inquiries and comments from members of the scientific community. Members of the scientific community were extremely concerned about the effects of the Service's regulations upon the ordinary scientific exchange of scientific specimens being shipped internationally through the mail or by way of ports other than officially designated Service ports of entry. Many expressed the concern that the Service's proposed regulations would seriously discourage much needed scientific research by adding significantly to its cost in dollars, hours worked, and paperwork. The Service, in publishing its proposed rule of September 14, 1994, did not intend to make any substantive changes to the existing requirements related to scientific specimens. The existing requirements relating to the importation and exportation of wildlife

at Service Designated Ports, and the inclusion of invertebrates within the definition of wildlife, remained unchanged.

The Service, however, has benefited from the many comments received and is making additional changes to Part 14 to address the concerns of the respondents. The numerous comments and inquiries received by the Service have helped the Service identify the technical and procedural problems associated with the present requirements in part 14, and those problems contained in the proposed rule. The Service has already acknowledged the need for some substantive changes and published in the Federal Register (60 FR 15277) a supplementary proposed rule on Thursday, March 23, 1995, allowing for scientific exchange. The significant change is the addition of a new section at § 14.24, entitled "Scientific Specimens" that allows accredited scientists or accredited scientific institutions to import or export, at any Customs port or through the international mail system, dead, preserved, dried, or embedded taxonomic or systematic collection specimens. This exception would not apply to wildlife being imported or exported that would require a permit under any of the Service regulations established in Title 50, Code of Federal Regulations, parts 16, 17, 18, 21, 22, and 23.

Comments Pertaining to 50 CFR 14.4: Definitions

Comments

The Service received numerous comments on the definitions proposed for inclusion within § 14.4. Comments were received from a great variety of interested persons on this section, including, numerous scientists involved in importing or exporting scientific specimens for taxonomic or biological control purposes, individual sportsmen and sportsmen's organizations concerned with the importation or exportation of sport-hunted trophies, commercial import/export businesses, and "for-profit" amusement parks importing or exporting live wildlife for display purposes.

A significant portion of the comments pertaining to § 14.4 concerned the Service's definition of "commercial." This term is used to clarify when a wildlife shipper is required to obtain an import/export license, and when the personal baggage exception does not apply. The proposed rule defines commercial to mean related to the offering for sale or resale, purchase,

trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to quantity or weight. A presumption is also established within this definition to provide that eight or more similar unused items will be considered by the Service to be commercial use. This presumption specifically excludes such items as antiques, collectibles, or curios. The effect of this presumption, however, may be rebutted by the importer, exporter, or owner, or by the Service.

Many scientists were of the opinion that the definition of "commercial" as written would have an adverse effect upon scientific study by restricting the free exchange of scientific specimens among researchers and systematic biologists. Another scientist noted that systematic biology is a shared endeavor, that has as its basic scientific data the natural history specimens that are maintained in museums or similar institutions that are shared internationally by way of scientific exchange.

Many respondents considered the presumption effect of this definition to be inappropriate when applied to shipments of scientific specimens such as insects. Some scientists characterized the definition as a "subjective determination" that lacked all merit as applied to invertebrates. Others saw the definition as having a "vertebrate" bias and thought that the regulations seem to be targeted to vertebrate species and not invertebrates. The laws governing the traffic, loan, and exchange of invertebrate scientific specimens, as one respondent noted, should not be confused with commercial uses of wildlife. Comments included the assertion that scientific specimens are not generally imported or exported for profit or commercial gain, have no commercial value or commercial use, and will often contain more than eight similar items or scientific specimens within a shipment. Many comments explained that an exchange of scientific specimens of insects may contain many hundreds of specimens. Several other common themes ran through many of the comments.

Service Response

The Service's definition of commercial has been misinterpreted to apply to scientific exchange specimens. The Service acknowledges the concerns of the many respondent scientists and has made changes to accommodate scientific exchange in its final regulations by adding a new section at

§ 14.24 allowing for certain exceptions to the designated port and declaration filing requirements by accredited scientists and scientific institutions. A definition of commercial is important to clearly differentiate when a particular import or export is being done for a commercial purpose, due to the obvious detrimental impact commercial activity can have on wildlife populations. In many instances, items intended for commercial sale or to solicit sales are declared as personal effects. The effect of the presumption is merely to inform the public that unless a person can prove otherwise, eight or more unused items will automatically be considered a commercial shipment. Other amounts can be considered commercial depending on the facts and circumstances of each case. This definition was never intended to reach taxonomic specimens since it was intended only to apply to wildlife products and not scientific specimens.

Comments

One commercial exhibitor requested that the Service amend the definition of commercial to include what the respondent termed "the use of any wildlife article as an exhibit for the purpose of soliciting sales thereof." Another respondent from the business community suggested the "presumed commercial" number be reduced from 8 to 3, and further suggested that the Service include a value limit of \$5,000.00 for any individual wildlife item being imported or exported. Another commenter from the wildlife import/export industry, questioned whether wildlife items, imported for display at trade shows or as a sample, would necessarily be considered a commercial importation under what the respondent termed the "eight or more" commercial presumption, if the item(s) themselves were not intended for sale. One respondent requested that the definition of commercial be revised to include a presumption that cataloged specimens, transported from one research institution to another, are not commercial. Several respondents suggested that such scientific collections be considered "collectibles" and therefore exempt from what was characterized as the "rule of eight" commercial shipment presumption standard.

Service Response

The Service's intent was to clearly include samples used to solicit sales within the definition of commercial, because of the obvious commercial intent. Items used as exhibits in order to solicit sales are clearly being transferred

for a commercial purpose, although the individual items may not actually be sold, they are being imported or exported for a commercial purpose. The Service will keep the commercial presumption at eight. This presumption number merely serves as a threshold point and gives the public some notice of when the Service will view their imports or exports as presumptively commercial. Again, other lesser amounts can be determined to be commercial based upon the facts and circumstances of each case. The Service will evaluate such indicators of commercial intent such as the value, condition, the purpose of the import etc., in making its determination.

Comments

Several comments were received from wildlife professionals commenting in an unofficial capacity, regarding the exception provided for antiques, collectibles and curios, within the proposed definition of commercial. One individual noted that there has been an increase in the commercial trade of such wildlife items, which in the commenter's opinion, may encourage certain individuals to attempt to circumvent the applicable declaration requirements and inspection fee by falsely claiming this exception. The Service, however, also received extensive comments from representatives of wildlife user groups suggesting that additional exceptions be added within the definition of commercial for such articles as antiques, collectibles, and curios that are presently not included.

Service Response

The Service has considered the above comments carefully and agrees with the commenters suggestion to eliminate the exception in the definition of commercial for antiques, collectibles and curios, for the following reasons. The Service believes that the commenter is correct in stating that the trade in antiques, collectibles and curios containing wildlife products is on the increase. Importers of antiques, collectibles or curios containing wildlife which are subject to the provisions of this part should be required to rebut the same commercial presumption, for quantities of 8 or more, as importers of wildlife products not considered to be antiques, collectibles or curios. The intent of the commercial definition is to advise the public that the Service will consider an importer to have commercial intent when importing eight or more similar unused items containing wildlife, in order to discourage commercial dealers from using the

personal effects exemption contained at § 14.15 to circumvent declaration and license requirements. This definition was proposed by the Service to address the enforcement problem of wildlife dealers, including dealers in antiques, curios and collectibles, using the personal effects exemption improperly. The Service finds serious inequity in allowing dealers in these items an exception in the definition of commercial while not allowing exceptions for other commercial dealers. The Service has removed this exception from the definition of commercial. Importers of eight or more similar unused wildlife products will be considered uniformly by the Service and will be required to rebut the same presumption regardless of the wildlife being imported being classified as an antique, curio or collectible. The Service has considered the fact that removing this exception from the definition of commercial will increase the volume of wildlife products being viewed as having potential commercial intent and requiring additional attention by Service personnel. This manpower consideration is, in part, what prompted the inclusion of an exception in the definition of commercial in the proposed rule initially. However, upon further review, the Service believes that having a threshold number of eight before the commercial presumption is triggered will eliminate many shipments from requiring more detailed inquiry from Service personnel. This change to the definition of commercial will relieve Customs and Service personnel from defining "antique, curio or collectible" (for purposes of the commercial definition), will not change the ability of noncommercial importers to rebut the commercial presumption if they are importing eight or more similar items, and will make the Service's intent, of requiring all commercial dealers to obtain import/export licenses and declare their shipments, less ambiguous.

The commenters suggestion of not excepting antiques from the definition of commercial has also been considered by the Service. The Service believes that § 14.22, Certain antique articles, adequately addresses the importation of bona fide antiques containing endangered or threatened species. The Service believes that to include an additional exception in the definition of commercial for antiques is unnecessary. Those antiques not containing endangered or threatened species will be presumed commercial if eight or more similar items are imported, requiring the importer to rebut the

commercial presumption, similar to importers of collectibles and curios.

Comments

Several commenters expressed concern that their particular activity involving the import and export of wildlife would be considered "commercial" using the Service's definition of commercial in the proposed rule.

Service Response

Without exception, the Service intends that any activity meeting the definition of commercial contained in § 14.4 will be considered as such and will require the individual or business to obtain an Import/Export License. However, the use of the new definition of commercial is not the only criteria which the Service uses to determine if an Import/Export License is required. The current § 14.91(a), which is not being changed in this rulemaking, requires anyone "engaging in business as an importer or exporter of wildlife" to first obtain a valid import/export license.

Comments

One representative of a hunting/conservation group expressed the opinion that within the definition of commercial there should be an additional exemption for "personal use sport hunted trophies." Sport hunted trophies as the respondent explained will often number more than eight items and should be entitled to a presumption of being a noncommercial import or export.

Service Response

The Service recognizes that the importation of most sport hunted trophies are for personal use. However due to the fact that some sport hunted trophies are of a commercial nature, the Service feels that a categorical exemption is not warranted.

Comments

Many respondents proposed specific changes or additions to the definitions provided to address their particular activity. One respondent suggested that the Service define the terms "item of wildlife" and "similar unused items" to exclude scientific collection of invertebrates. Other respondents questioned whether the word "similar" was to be defined by either Class, Family, Species, Subspecies or some other classifying factors. Another respondent representing a large animal advocacy group suggested that "items of wildlife" and "similar items" do not adequately address shipments of live

animals and should be amended to read "shipment of eight or more similar items or live wild animals."

Service Response

The Service believes that the terms to be used in the Definitions section should be interpreted in the broadest sense and assigned their common ordinary meaning. The Service does not see any merit in attempting to define terms so narrowly as to apply only to one specific activity or circumstance.

Comments

Although most respondents opposed the adoption of the commercial presumption as written and its application to all wildlife being imported or exported for scientific purpose, some respondents supported the proposal. Most notably, one respondent expressed the opinion that all such shipments should be uniformly considered commercial with the burden of proof being placed upon the importer, exporter or owner to clearly demonstrate otherwise.

As the respondent further elaborated, this is especially applicable to situations where commercially traded highly priced wildlife and wildlife products are imported or exported in small quantities.

Service Response

The Service continues to believe that there is a strong rationale and basis for the application of the presumption provided in the definition of commercial.

Comments

The Service received a few comments on the definition of export. One broker, concerned about the definition of export in § 14.4, noted that the single act of presenting a shipment by a broker or exporter to a Service Wildlife Inspector for export should not automatically constitute an export or attempt to export as proposed by the Service. The respondent further emphasized that there are occasions when the required documentation or tags for the export of wildlife is only discovered to be missing after the wildlife has been presented for export clearance. This, the respondent maintained, has subjected exporters to civil and or criminal penalties, even where such omissions are due to innocent behavior and no illegal act was attempted. The respondent suggested that the exporter and the Service should be given an opportunity to mutually determine whether a particular shipment has met all the legal requirements.

Service Response

The burden of presenting the proper documentation is clearly upon the importer or exporter of record. The effect of the Service regulations is merely to establish when an item is an export or import. In the case of imports the Service will only have access to items when those items have been imported. The Service is also required to inspect shipments of wildlife being exported. In such situations the status of the item needs to be clearly understood for declaration filing and for validation of CITES permits. The Service's intent was to clearly define when an item has become an export, all allow the public to ascertain at what point in the shipping process the Service considers a wildlife item to be exported. For example, the Service would consider the consignment of goods to a common carrier destined for a point outside the United States as an attempt to export.

Comments

Responses were received concerning the definition proposed in § 14.4 for Domesticated animals. Several respondents requested the inclusion of particular species within the list provided of recognized "domesticated animals." One respondent suggested the inclusion of such vertebrates as the corn snake, rat snake, king snake, milk snake, bearded dragon, leopard gecko, garter snake, and others. Another importer suggested the Service include within its list several additional species of reptiles and amphibians such as the prairie king snake, clawed frog, alligator, red-eared slider, bullfrog, and leopard frog. One respondent requested that the Asian water buffalo and the bactrian camel also be included.

Service Response

The list of domesticated animals incorporates Service policy which was developed over a substantial period of time. This list represents many of the most commonly seen species that have been domesticated historically. The list was never intended to be all inclusive and many additional species could be added. The Service will reevaluate the list on a periodic basis. The Service has reviewed the suggestions made and has determined that the domesticated animals definition will remain as proposed, with the exception of the addition of honeybees.

Comments

A few comments were received that concerned the list of domesticated birds contained within the definition of domesticated animals in § 14.4. One respondent suggested the Service

further explain what was meant by the descriptive words "Ducks and geese—domesticated varieties." Another respondent requested that the Service delete from the list of domesticated birds the word *domestica* from the scientific name *Columba livia domestica*.

Service Response

The terms, ducks and geese—domesticated varieties, means common varieties of ducks and geese that are raised in animal husbandry and are not commonly found in the wild. The scientific name "domestica" is intended to indicate that the Service considers only domesticated varieties of this species to be domesticated animals.

Comments

One respondent was concerned with the Service list of domesticated fish categorized as domestic for export purposes only. This list, as the respondent noted, includes domesticated carp and goldfish. The respondent was concerned about the effects of such classification for there has been an increased number of smuggling cases of fish that are falsely marked as goldfish. The respondent suggested that a wildlife declaration form, 3-177, should be a minimum requirement for the import or export of such items. A few respondents were concerned with insects listed as domesticated. One respondent suggested adding honeybees, with the exclusion of the Africanized honeybees, to the list of domesticated insects.

Service Response

The Service is cognizant that any exemption to its inspection and clearance requirements may be perceived as an opportunity for persons to smuggle. The Service, however, is prepared for such eventualities and will periodically spot check the trade in such items to ascertain the degree of compliance. The Service does not believe that the regulation of such exempt items is warranted at this time. The Service does, however, see merit in the suggestion of adding honeybees, not to include africanized honeybees, to the list of insects exempted from inspection and clearance. Honeybees do not represent an enforcement concern for the Service, are considered to be ecologically beneficial insects that are not endangered or threatened or proposed for such listing under the Endangered Species Act, and have historically been domesticated. In response to the comments received, honeybees have been added to the list of domesticated insects at § 14.4.

Comments

A significant number of comments were received from the scientific community regarding the shipment of scientific specimens in the form of taxonomic or systematic collections via the U.S. and international mail systems. Most respondents expressed great concern that without this method of shipment the U.S. scientific community would become isolated from foreign institutions. This would result, according to the respondent, in the scientific community becoming unwilling and economically unable to ship scientific materials to the United States for research purposes. Most respondents felt that an exemption should be included within the definition of commercial in § 14.4 or at § 14.55 for bona fide research specimens.

Many respondents were troubled by the Service's failure to define the terms "bona fide research institution" and "scientist." Many respondents specifically requested that the Service define the terms "scientific institution" and "scientific collection" by regulation and provide such entities an exception to the marking and clearance requirement of part 14. One respondent suggested that the term "Research Institution" should be defined to include any institution, organization, or agency established for the purpose of conducting scientific biological research and educational activities, that is eligible for registration as a scientific institution by the Management Authority of the CITES Conference 2.14 standards for registration of scientific institutions.

Service Response

The Service, as mentioned earlier in the discussion, has taken steps to clarify its requirements as they pertain to scientific specimens. The Service does not use the term "bona fide research institution" and has defined the terms accredited scientific institution and accredited scientist. The Service has made several changes in its regulations to provide an exception for dead, preserved, dried, or embedded scientific specimens in § 14.24. The Service is also providing an exception to its clearance requirements in § 14.55, an exception to import declaration requirements in § 14.62, and an exception in its export declaration requirements in § 14.64 for such specimens in response to commenters concerns.

Comments

Several respondents were opposed to the Service providing any special status to bona fide scientists or scientific institutions. One respondent noted that much valuable research has been done by "amateurs" such as Charles Darwin and James Audubon and that the ability of such persons to continue their valuable work should not be hindered and that they too should be included within the definition of "scientist."

Service Response

The Service provided for this exemption because it did not intend to interfere with the work of accredited scientists engaged in scientific pursuits. The Service was faced with the problem, however, of how it could provide for scientific exchange yet maintain oversight and differentiate such exchange from commercial shipments. The Service acknowledges that much important work in the natural sciences has and continues to be done by independent collectors and researchers, many of which lack formal degrees in science. Amateur scientists, however, can seek and obtain accreditation for their work from such institutions as defined, or can simply comply with the requirements of this part. The Service believes this to be a proper and reasonable alternative in view of the recent trend of commercial sale of insects, particularly, species of butterflies and beetles. The Service arrived at what it believed was a fair standard in providing for such exchange by accredited scientists working with accredited institutions.

Comments Pertaining to 50 CFR 14.12 Designated Ports

Many comments were received concerning the use of designated ports for the import or export of wildlife and the shipment of wildlife items through the U.S. mail. Many respondents requested that the shipment of scientific specimens through the mail be made exempt from the designated port and border port requirements for wildlife. Many respondents were concerned about the anticipated economic hardship if the shipment of scientific specimens were limited to Service designated ports for clearance and the ordinary use of the mail was restricted. One respondent suggested that the scientific specimens should be included within the revised § 14.15, or that § 14.31(b)(4) be rephrased to read: "The port(s) of entry, including all ports of entry for international mail, where importation or exportation is requested * * *."

Service Response

The Service acknowledges the concerns scientists have about the use of the mail and has provided a limited exemption explicitly at § 14.24.

Comments Pertaining to § 14.15: Personal Baggage and Household Effects

One respondent requested that the Service define the terms "household effects" and "residence." One representative of a scientific institution requested that the Service include scientific specimens within the existing provisions of § 14.15 that provide for personal baggage and household effects. This, as noted by the respondent, would allow scientific specimens contained in a person's personal baggage or household effects to be imported or exported at any Customs port of entry and would help to avoid any confusion regarding certain scientific specimens, particularly bird and mammal skins, being considered "raw or dressed fur, raw, salted, or crusted hide or skin." These, as the respondent noted, are specifically excluded at § 14.15(b) from this exception to the designated port requirement for imported or exported wildlife.

One respondent representing a falconry association requested that falconry birds, lawfully held pursuant to a permit under 50 CFR 21.28 and 21.29 be included in the "personal baggage exemption" for temporary imports and exports when such imports and exports are to Mexico or Canada for recreational sport hunting purposes.

Service Response

The Service finds no merit in the above suggestions. The provisions of § 14.15 were intended to cover only certain kinds of wildlife products and manufactured articles not intended for sale and used as clothing or contained in personal baggage, or such products and articles as mounted game trophies or tanned hides which are a common part of a shipment of household effects. These exceptions to the designated port requirements were never intended to apply to live wildlife, or to wildlife requiring a permit, even if the intended use is of a scientific nature. Live wildlife, and wildlife covered under the provisions of 50 CFR parts 16, 17, 18, 21 or 23, require a higher level of oversight by the Service.

Comments Pertaining to 50 CFR 14.21 Shellfish and Fishery Products

One respondent expressed some concern about the harvest and export of freshwater mussel shells within the Class Pelecypoda. Although the

amendment as proposed in § 14.21(a)(2) specifically states "aquatic invertebrates of the Class Pelecypoda," the respondent felt that there would be some confusion by the public and the courts. The respondent suggested that the Service identify what freshwater species of aquatic invertebrates are not exempt.

Service Response

The Service finds no merit in the above suggestion in view of the burden of codifying thousands of species of aquatic invertebrates when comparatively few species are being exempted.

Comments

Another respondent recommended changes to § 14.21(b) Pearls, suggesting that this part should be expanded to include both import and export by including "pearls imported or exported for commercial purposes may enter or leave."

Service Response

The Service finds merit in this suggestion in that it points out a deficiency in the proposed language of the exception. The Service's intent in referencing Pearls under the shellfish and fishery products exemption at § 14.21 is to grant the same exemption to pearls as is currently given fishery products for human consumption, which includes exemption from the designated port requirement and declaration requirement for exports. The addition of § 14.21(b) is intended to codify Service policy on pearls issued in March 1985, in which pearls would be considered shellfish and fishery products. The language at § 14.21(b) will be changed in this final rule to reflect the intent of the Service to exempt pearls exported for commercial purposes. Section 14.21(b) will be modified to read "pearls imported or exported for commercial purposes may enter or exit the United States at any Customs port of entry."

Comments Pertaining to 50 CFR 14.22 Certain Antique Articles

Under the provisions of § 14.22 as revised, any person may import any article, other than scrimshaw, that is at least 100 years old, and is composed in whole or in part of an endangered or threatened species listed under 50 CFR 17.11 or 17.12, and has not been repaired or modified with any part of any endangered or threatened species. Under this section, such importations are authorized to occur at any port designated by Customs for the importation of such antique articles.

Several comments were received in regards to this section. One respondent recommended that this section be amended to include both importations and exportations. The respondent suggesting addition of text to the section to provide that "Except for antique items requiring a permit pursuant to part 23, any person may import or export at any port * * *." One respondent recommended that the exemptions for certain antiques in § 14.22 be completely eliminated and noted as a basis for making this recommendation the apparent increased commercial trade in such items. A concern expressed by one respondent was that certain dealers would attempt to circumvent the declaration requirement and inspection fee by falsely claiming the exemption. Another respondent who was similarly concerned noted that as proposed this section would allow the importation of antique elephant ivory.

Service Response

The Service has carefully considered these comments and responds by noting that the exemption at § 14.22 is intended to only apply to the import of certain antique articles. The statutory exemption contained at 16 U.S.C. 1539(h) is specific in granting the exemption only to imports. To authorize export of certain antiques under this Section would clearly be beyond the Service's statutory authority. This section, however, does not prohibit persons from applying for a permit to export certain antique articles containing endangered species from the United States under the provisions of 16 U.S.C. 1539(f). It is clearly the intent of the Service that antique articles containing parts of species now listed as endangered or threatened and meeting certain standards be exempt from the designated port requirement. With respect to the commenter's suggestion of eliminating the exemption in this part for certain antiques, collectibles and curios, the Service believes it has addressed the issue that many of these items are destined for commercial markets by removing the exemption for antiques, collectibles and curios from the definition of commercial. The Service believes that it has adequately and reasonably addressed this issue. With respect to the commenter's suggestion that the revision to § 14.22 will allow the importation of antique elephant ivory, antique ivory is already allowed to be imported under provisions of the African Elephant Conservation Act.

Comments Pertaining to 50 CFR 14.52 Clearance of Wildlife

Many respondents expressed some concern about the effects of physical inspection on fragile scientific specimens by Service Wildlife Inspectors. Many of these respondents strongly recommended that the transfer of scientific collections between "accredited scientific institutions" be made exempt from the inspection and clearance requirements. One scientist suggested that if documents are provided for non-protected species then actual physical inspection of such specimens should not be required. Several environmental education and animal advocacy groups expressed contrary views and were insistent that all shipments of wildlife be physically inspected prior to clearance. On a related issue, many representatives of animal welfare organizations were concerned with the adequacy of the Service's inspection program and expressed the view that all shipments, particularly importations and exportations of live wildlife, should be physically inspected.

One representative of an entomological society was concerned with what the respondent perceived as the Service's increased, burdensome regulations upon entomologists. The respondent further noted that the Service's regulations as proposed would require the hiring of brokers and agents to facilitate the shipment of scientific specimens through Service designated ports. The respondent also noted that such requirements will significantly increase the costs of scientific exchange.

Service Response

The Service has responded to these concerns raised by the scientific community in the provisions added at § 14.24. This section provides for an exception to the designated port requirement and extends the declaration filing requirements of dead, preserved, dried, or embedded scientific specimens, not requiring a permit, that are imported or exported by accredited scientists or accredited scientific institutions.

Comments

Other respondents were concerned with § 14.52(c)(3), which requires the importer to make available to the Service all permits and documents required by the laws or regulations of any foreign country prior to obtaining clearance by the Service. Many respondents were concerned about the detainment and possible seizure of cargo while the Service determines the

permits and documentation required by a foreign country.

The Service proposed to add a paragraph at § 13.52(c)(5) to provide that the Service will require "any documents and permits required by the country of natal origin of the wildlife" to be provided upon importation or exportation. Many respondents were concerned with problems in establishing the "country of natal origin" of wildlife. Several respondents were concerned with the scope of this additional documentation requirement. The respondents noted, that importers and exporters would be required to obtain export licenses, captive-breeding certificates, or breeding licenses from the "country of natal origin." Some respondents were concerned about potential challenges to foreign permits and the procedures that would become necessary to establish the validity of such permits and other documentation. Many importers expressed concern with "country of natal origin" requirements and believed that it would often be impossible to determine what documentation was required. Several respondents anticipated problems in obtaining the required documentation and were concerned that shipments may be detained and seized under the procedures specified in § 14.53(a). One respondent was concerned about having to obtain documents and permits from foreign governments within the proposed time period. The respondent recommended that a mechanism be provided for the granting of extensions. Several respondents asked: if wildlife is currently to be exported legally, why should additional documentation be required? It would be difficult, noted one respondent, to obtain documents and permits from the country of natal origin for "thousands of specimens." Another respondent suggested that this requirement should be maintained for endangered invertebrate wildlife but believed such a requirement to be unworkable when applied to non-protected species.

Service Response

The Service has historically required, and will continue to require, the importer of record to satisfy the provisions of § 14.52 by supplying those items listed under paragraph (c), in order for the Service to make a determination as to the legality of the wildlife or wildlife products being imported. It is clearly the position of the Service that those individuals engaged in importing wildlife or wildlife products into the United States make reasonable efforts to determine lawful origin of the wildlife or wildlife

products and to ensure compliance with applicable foreign law. It is also the intent of the Service to detain shipments containing wildlife or wildlife products when compliance with foreign law is in question. Questions will arise as to the status of a shipment under foreign law or CITES when the importer of record fails to supply the Service with permits or other documentation which are known or suspected by the Service to be required by a foreign country. In some instances it may require an additional amount of time (in excess of 30 days) for the Service to verify the requirements of a foreign country when a shipment is questioned, in which case the revision to § 14.53(a) allows, for the extension of the 30 day provision to "a longer period if specifically stated."

The Service's intent in modifying § 14.52 is to clarify for the public what documentation the importer of record is required to supply upon requesting clearance for imported wildlife and wildlife products. In proposing to require documentation from the "country of natal origin" the Service was attempting to address the enforcement concern of wildlife being unlawfully exported from an originating country in violation of an existing ban on exports, or in violation of a foreign law designed to regulate the export of such wildlife, and its subsequent re-exportation from a secondary country to the United States. The Service is bound by domestic law and international treaty to ensure compliance with foreign law. The Service finds merit, however, in the comments submitted. The Service recognizes that determining the natal origin and requiring documentation for each successive importation and re-exportation of wildlife may impose an unreasonable burden on importers and Service personnel. In response to these concerns the Service will revise § 14.52(c)(5) to read: "Any documents and permits required by the country of export or re-export of the wildlife." This revision will allow the public to more easily determine when they have met the requirements imposed by CITES or of foreign law. However, this revision will not completely relieve the importer of the burden of providing proof of lawful export in circumstances where wildlife is coming from a country known to the Service to have a ban on the export of such wildlife, even if coming through a re-exporting country. In those circumstances the importer may be required to show proof of lawful export from the "country of natal origin" to the country of re-export or to the United States. In response to the comments received, the Service has

determined that it would be unreasonable to require country of natal origin documentation with every importation, especially in the absence of reasonable suspicion of unlawful export from the country of natal origin. This Section has been appropriately revised in this final rule.

Comments Pertaining to 50 CFR 14.53 Detention and Refusal of Clearance

The Service has proposed several amendments to the Refusal of Clearance section in § 14.53. Many respondents were concerned about the new detention and refusal of clearance requirements in § 14.53(a) and the process by which a detention becomes a formal seizure. In general, this new section provides that any Service officer may detain imported wildlife in accordance with established procedures. The Service, however, will provide notice of the detention containing a description of the wildlife involved, and the basis for the detention, and describe the general nature of the tests or inquiries to be conducted during the detention. This section also provides that if the legality of the wildlife has not been determined within 30 days after the date of notice, or other period as stated, that the wildlife shall be deemed to be seized and no further notification of seizure will be issued. This requirement is intended to establish a limit to the duration of any detention by the Service of wildlife items being imported or exported and to specify when such detention may be given the status of having been seized for the purposes of filing an appeal. The effect of this change is to clearly distinguish at what point an ordinary detention of wildlife for purpose of inspection, clearance, or identification can be regarded as having been seized.

One representative of the pet industry thought the proposed conversion, from a detention to a "formal" seizure would violate Constitutional Due Process requirements. Another respondent was concerned that the 30-day seizure rule could be manipulated in the Service's favor by dragging its feet. This respondent was also concerned that detained property, that later became a seizure, would be disposed of without further notice to the importer. Another wildlife exhibitor expressed concern regarding the detention of large animals without providing the shipper the opportunity to respond "within a reasonable period of time" after being notified.

Service Response

The Service does not intend for any of the changes in § 14.53 to discourage

dialog between an importer and the Service during a period of detention. The importer of wildlife being detained would be free to offer, in good faith, any information documentary or otherwise, to assist the Service in its inquiry of the legality, identity, or origin of wildlife or wildlife products being imported.

Comments

Another respondent requested that formal detention criteria be established similar to the criteria outlined for refusal of clearance in § 14.53(b). The respondent noted that without such guidelines there would be significant inconsistencies in the application of detention and the potential for abuse. One representative of the wildlife import/export industry remarked that although there are guidelines provided for the Service's "refusal of clearance" of wildlife shipments, there are no such guidelines for the "detention" of wildlife.

Service Response

Guidelines are offered in this section for refusal of clearance due to a refusal being of a direct nature which could lead to the immediate seizure and initiation of forfeiture action or other appropriate action by the Service. Detention of wildlife or wildlife products being imported is merely a formal inquiry period whereby the Service establishes the status of a given shipment. The Service believes that providing for a formal detention period giving the importer or exporter time in which to comply with Service requirements is reasonable, given the alternative of refusing clearance on the shipment, and possibly seizing it and seeking forfeiture. The myriad circumstances which would give rise to some reasonable suspicion and would then dictate formal detention are so numerous and variable that the Service needs some flexibility in its application of detention. In general, goods will be detained either to identify the wildlife being imported, or to verify foreign permits presented for clearance. The Service would note that specific guidelines for seizure and forfeiture of imported wildlife and wildlife products are contained at 50 CFR part 12.

Comments

One respondent suggested that the Service amend the proposed changes to § 14.53(a) by adding safeguards found in Customs law found at 19 U.S.C. 1499. Specifically, the respondent requested that the Service add two phrases: "the anticipated length of the detention"; and "what information should be furnished by the importer or consignee

that may accelerate the disposition of the detention."

Service Response

This section will require the Service to inform the importer or consignee of the maximum period of detention, after which the wildlife, if not released, will be considered seized. As stated, the Service is willing to accept any information, offered in good faith, that the importer or consignee can provide to assist in determining the status of imported wildlife. However, the Service does not want to require information to be submitted by the importer in each detention circumstance, since detention frequently involves communication between the Service and foreign governments in document verification, which is beyond the control of the importer or does not require input from the importer.

Comments

Several respondents suggested that the text of § 14.53(a) be amended to provide for the detention for both imported and exported wildlife. Another respondent suggested adding APHIS inspectors to those officers vested with the authority to detain wildlife shipments. The respondent noted that APHIS has the authority to regulate CITES plant material under part 24 and on those occasion when Customs or Service Inspectors are not available, APHIS Inspectors are available to detect shipments which need Service attention. Many respondents were concerned about the storage of detained wildlife. Other respondents were concerned about who would be responsible for the storage costs incurred as a result of the Service detaining an importation and whether, in the case of live wildlife shipments, they would be stored in adequate facilities.

Service Response

The USDA, in particular APHIS, unlike the Customs Service has not been granted authority in this regulation to detain wildlife shipments for the Service. Although the USDA provides valuable assistance to the Service in detecting shipments containing wildlife, only the Customs Service is authorized to act in the absence of Service personnel.

The Service clearly intends for the cost of storage or demurrage of shipments in a formal detention status to be borne by the importer or owner of those goods as is customary with other regulatory agencies such as the Customs Service.

Comments

Several respondents were concerned about § 14.53(b)(2). This paragraph provides that any Service officer may refuse clearance of imported or exported wildlife and any Customs officer acting under § 14.54 may refuse clearance of imported wildlife when there are reasonable grounds to believe that the correct identity and country of origin of the wildlife has not been established. This paragraph further provides that in such cases the burden is upon the owner, importer, exporter, consignor, or consignee to establish such identity by scientific names to the species level or, if any subspecies is protected by the laws of this country or the country of origin, to the subspecies level. Several respondents expressed concern with the addition at § 14.53(b)(5), which provides that the Service, or any Customs officer acting under § 14.54, may refuse clearance of imported or exported wildlife when there is reasonable grounds to believe that any fee or assessed penalties against the importer or exporter under part 11 of this chapter have not been paid. A few respondents felt that they would be penalized for exercising their right to contest a civil or criminal penalty which had previously been assessed.

Service Response

The Service has carefully considered these comments and believes that nothing in the amendment to § 14.53 will actually deny any individual the right to contest or appeal a civil or criminal penalty levied against them. The Service finds merit, however, in the commenter's concern that this Section may appear to be coercive, and would discourage an importer or exporter from exercising their right to file an appeal under part 11. In response to the commenter's concerns, and to clarify for the public when the Service will or will not exercise its authority under § 14.53, the Service will further revise this section to read that the Service will refuse clearance for non-payment of assessed penalties, except for those assessments on appeal. The revised § 14.53(b)(5) will read as follows: "Any fee or portion of balance due for inspection fees required by § 14.93, 14.94, or penalties assessed against the importer or exporter under 50 CFR part 11, has not been paid. This paragraph shall not apply to penalty assessments on appeal in accordance with the provisions of part 11."

Comments Pertaining to 50 CFR 14.54 Unavailability of Service Officers

Many respondents were concerned with Service proposals to change § 14.54(a). Several scientists thought the requirement to notify the Service 48 hours in advance of importations and exportations was impractical for such shipments are often times made on a continuous basis during the scientific field work season. One Service employee responding in a private capacity noted that the Service in § 14.54(a) needs to expand or define the term "conditional release" as it relates to shipments released to importers prior to clearance. Another respondent noted that the phrase "within a reasonable time" could be subject to differing interpretations if it was not better explained or defined. One respondent noted the proposed amendments changed the word "if" to "where" in the phrase "where a Service officer is not available." The respondent further remarked that at designated ports Service officers are available. One wildlife professional commenting in a private capacity suggested that the 48 hour notification should be required to be made during normal business hours. Another respondent suggested that to cover weekend and holidays the 48 hour notification should be increased to 72 hours. Importers, as one respondent explained, often do not receive notice of importations until 12 hours prior to the importations. Another respondent claimed that wildlife importers are often not notified of the arrival of such shipments until after they are in route. One respondent suggested that in such circumstances a "special inspection fee," similar to that assessed for overtime fees, should be charged to provide for these unscheduled inspections.

Service Response

The Service has carefully reviewed these comments and notes that the revisions to § 14.54(a) do not apply to every importation. This section is intended to apply to circumstances involving import of live or perishable wildlife or wildlife products or when inspection is requested at the time of arrival. The Service believes that businesses dealing in perishable wildlife or wildlife products at least contemplate the arrival of shipments within a 48 hour time frame, which would allow for Service notification. The Service is attempting to provide an increased level of service to those persons dealing in live or perishable wildlife or to those whose shipments must be expedited upon arrival. The

Service cannot provide this level of response, if some form of prior notification is not given. The Service will keep the notification requirement at 48 hours for affected imports.

Comments

Many other comments were received concerning the proposed provision to require that the Service be notified and the shipment be made available for inspection 48 hours prior to exportation. Several respondents from the Alaskan fur trade anticipated problems with the Service notification requirement.

The lack of basic communication, as one respondent explained, from the "bush," the prevalence of "multi-carrier" methods of shipments originating with small bush carriers, and the usual delays caused by weather are all significant factors which would complicate or inhibit individual compliance with such notification requirements. Several representatives of the wildlife import/export industry thought the 48 hour advance notice for exportations in § 14.54(f) was unreasonable, particularly when notice is given to a Designated Port during normal working hours. Several other respondents agreed with the 48 hour prior notification for exports in § 14.54(f) but believed it would not be possible to make shipments of live perishable wildlife available for inspection 48 hours prior to shipment. One respondent requested that the term "time of exportation" be made clearer and suggested that the term be revised to read "the scheduled time of departure" of the vehicle, vessel, or aircraft from the port where the shipment was presented for inspection. One commenter believed that such a requirement would be detrimental to the welfare of live wildlife. The respondent suggested that the proposal be amended to provide for a 24 hour notice and to require that the shipment be made available for inspection at least five (5) hours prior to shipment. One respondent representing a sports hunting and conservation organization expressed concern with the term "perishable" and asked if salted or dried skins and sport hunted trophies would be considered as perishable wildlife. The respondent further noted that without a more specific definition of the term, there would be inconsistencies in the interpretations made by individual Wildlife Inspectors. One respondent was particularly concerned that § 14.54(f) did not include the same provision for "when Service officers are not available" as does § 14.54(a). The respondent noted that in situations when a shipment is prepared for export

and the Service is unavailable to inspect it, there should be a provision to allow the shipment to be sent without physical inspection by the Service so as not to incur additional fees and charges.

Service Response

The Service believes that the 48 hour notification requirement is reasonable in view of the ability of Customs Officers to act on behalf of Service Officers under the authority of § 14.54 when Service Officers are not available, and the provision under § 14.54 requiring clearance by a Service Officer "unless expressly authorized otherwise." This last provision will allow for clearance of exports without physical inspection in unusual situations. The Service is attempting to maintain effective oversight while allowing for clearance in those situations in which an export would be delayed an unreasonable period of time waiting for physical inspection, or in which an officer is not available. The 48 hour notification becomes particularly important, in view of the requirement to obtain clearance prior to export, when dealing with live wildlife. The Service cannot maintain a high level of service, maintain oversight, and avoid unnecessary and costly live wildlife mortality, without some prior notification of the intent to export. The Service will not automatically consider salted or dried skins or sport-hunted trophies to be perishable items.

Comments Pertaining to 50 CFR 14.55 Exceptions to Clearance Requirements

Many representatives of professional scientific organizations were concerned with the effect of clearance requirements on the field of biological control. One respondent noted that wildlife shipments are already regulated by APHIS under the Plant Pest Act and should, therefore, be exempted from the Service's inspection and clearance requirement. Customs and APHIS, in the respondent's opinion, already adequately regulate the movement of such wildlife and the Service regulations are, therefore, overly burdensome. The Service, as the respondent suggested, could be alternatively notified of pending shipments by the receipt of an APHIS PPQ-526 permit.

Service Response

Neither APHIS nor the Customs Service is mandated to regulate the import and export of wildlife and wildlife products to and from the United States. The Service's mission and expertise is different than that of APHIS or the Customs Service and no

additional exceptions under this part can be justified.

Comments Pertaining to 50 CFR 14.61 Import Declaration Requirements

One respondent representing an entomological society requested that § 14.64(b)(1) apply to both imports and exports of scientific specimens. Numerous respondents expressed concern with the requirement to file 3-177 declarations with wildlife identification to the species level, stating that identifying scientific specimens is a long and laborious process that would take much longer than the 180 day requirement. Numerous other respondents expressed concern with the anticipated administrative burden and cost associated with the declaration requirement. Many respondents suggested exempting the trade of scientific specimens from the Service's requirement to file a Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) except where shipments contained endangered species. Other respondents were concerned with what was characterized as the anticipated "endless loop of filing for extensions."

Numerous respondents representing museums and the systematic scientists' community expressed concern with the requirement to file 3-177 for shipments of scientific collections. Many commenters noted that their current inventory of specimens is extensive and, therefore, would be impossible to list. Another respondent similarly noted that shipments of scientific collections are often made in bulk and the required inventory would be impossible to provide.

Service Response

The Service believes that it has addressed these concerns in its addition of § 14.24 to this Part.

Comments Pertaining to 50 CFR 14.62 Exceptions to Import Declaration Requirements

One respondent believed that the 180 day requirement to update a declaration in § 14.62(c) is too long a time period. This, in the respondent's opinion, had made it difficult for the Service to track incomplete 3-177s. One scientist requested that the text of § 14.62(a) be revised to provide that a 3-177 form does not have to be filed for importation of scientific specimens that are being shipped from one scientific institution to another. The respondent further noted that "the Service can have no particular interest in keeping track of the tens of thousands of scientific

specimens in museums that are being sent to experts or authorities around the world for study purposes."

Service Response

The Service believes it has addressed these comments in its addition of § 14.24 to this part.

Comments Pertaining to 50 CFR 14.64 Exception to Export Declaration Requirements

Several respondents suggested that the export of American raw furs should be made totally exempt from the Service's regulations. Several other respondents expressed similar opinions about what they regarded as the over-regulation of the fur trapping "industry." One self-described producer of captive-bred reptiles and amphibians requested that an exemption for reptiles and amphibians be added, similar to that provided in § 14.64(a) for live aquatic invertebrates. This, the respondent proposed, would allow the shipment of such animals for propagation purposes such as the exchange of breeding stocks. One respondent noted, regarding § 14.64(b)(1), that because the value of wildlife products is arbitrary, the threshold value of \$250.00 should be eliminated as a specific exemption to the declaration requirement. One representative of an entomological society requested that § 14.64(b)(1) be made uniformly applicable to both the import and export of scientific specimens. One respondent from a sport hunting association requested that the Service eliminate the exception for game trophies in § 14.62(b)(2). The respondent believed that there was a continued need for the Service to monitor this activity as it relates to the illegal harvest and subsequent exportation of wildlife. One respondent representing an animal advocacy organization suggested eliminating the game trophy exemption of this part and cited the Service's need to maintain records pertaining to noncommercial exportations of sport taken trophy fish and big game animals by foreign hunters and fisherman departing with wildlife trophies as personal baggage.

Numerous respondents suggested that scientific specimens should be allowed to be shipped via the U.S. mail. Many respondents suggested amending this section to include scientific specimens for scientific institutions and museums. Many scientists concerned with the import and export of biological control agents stated there should be an exemption to the declaration requirement for these items. One representative of a state wildlife agency

noted that scientific specimens have no commercial value or a value less than \$250.00 and, therefore, should be exempted from the export declaration requirement. It has been suggested that noncommercial importations of scientific specimens be exempted as well. One respondent suggested that wildlife being imported as personal accompanying baggage should be required to be declared and the 3-177 presented.

Service Response

The Service must balance effective oversight of activities involving the import and export of wildlife against the inconveniences caused by regulation. Those species indigenous to the U.S. and those species of wildlife common in trade are of particular importance in the regulatory scheme due to the Service's mission of protecting both indigenous wildlife and wildlife around the world threatened by over-utilization. The United States is a leader in wildlife management and the world's largest consumer of wildlife products, which places a burden on the Service to ensure that wildlife imported or exported complies with appropriate state and foreign law. Exceptions to regulatory requirements are carefully considered by the Service and developed over a long period of time. The Service does not see any merit in adding species commonly found in commercial trade, and not currently captive-bred to any large degree, to the exceptions to export declaration requirements. The suggestions made by commenters to expand the export declaration exemptions to species whose survival is affected by trade would be inconsistent with the mission of the Service and the intent of the regulation. Conversely, the Service cannot regulate all exports made under the personal effects exemption due to the Service's limited statutory authority, and the obvious impact this would have on movement of persons into and out of the United States. The Service will maintain oversight of export activity and make adjustments to the exceptions section as appropriate. The Service believes that the exceptions granted to scientific specimens in this part are warranted and adequately address those respondents' concerns.

The Service has added the word "live" to the export declaration exception at § 14.64(a) for aquatic invertebrates of the Class Pelecypoda, to more accurately reflect the Service's intent of exempting only living specimens of oysters, clams, mussels, and scallops.

Comments Pertaining to 50 CFR 14.81 Marking Requirements

Numerous comments were received in regards to § 14.81. One respondent expressed concern with toxic substances being shipped incidental to importations or exportations of wildlife, for example, insecticides in shipments of raw hides. The containers, according to the respondent, should be marked as to the hazard/identity of the toxic substances. One respondent suggested that the change the term "scientific species name" to read "species scientific name." One representative of a Federal agency expressed concern regarding the inability to accurately identify scientific specimens to meet this requirement. Several representatives of scientific institutions noted that it may not be possible to identify scientific specimens to species level at the time of importation. Many state agency representatives expressed similar concern regarding the identification of scientific specimens to the species level. It was noted by several such agencies that such invertebrate shipments often contain thousands of specimens which may take years to identify.

Several specific suggestions were received concerning the marking of containers. One respondent suggested marking as "specimens for scientific study" with the shipper and receiver being on a registry of "registered scientific collections." The respondent further noting that if follow up document inspections were required by the Service, the shipments would be well documented by the scientific facility making such inspection possible. Numerous representatives of foreign scientific institutions also expressed concern with the marking of as yet unidentified scientific specimens being submitted for identification. Several representatives of foreign institutions noted that scientific collections are generally sent as rough-sorted, bulk shipments and meeting this requirement would be impossible. One respondent from the wildlife import/export business community noted that the requirement to submit a shipping list containing the scientific name being shipped was a redundant effort as the 3-177 already contains this information. Additionally, the shipping documents are often provided by the shipper's agent and not directly under the control of the importer. Several respondents noted that they may have many different species in an insect specimen shipment. Another requested that the wording be amended to provide for a legible list of a shipment's contents containing the

identification of the specimens identified to the lowest taxonomic level that is scientifically possible. This would involve the number of each taxon listed and whether the members of the listed taxa are venomous.

Service Response

The Service's intent in revising this section is twofold. First, is the obvious safety concern of Wildlife Inspectors examining live wildlife shipments that may contain venomous species. This requirement will allow inspectors to identify the presence of venomous species without having the importer's declaration present. Declarations are generally filed when making entry, not necessarily when the shipment arrives. Second, this revision will assist Wildlife Inspectors in determining the applicability of this part when encountering wildlife shipments for which no declaration has been filed.

Comments Pertaining to 50 CFR 14.82 Alternatives and Exceptions to the Marking Requirement

Several responses received pertained to this Section. One representative of a large animal advocacy group suggested using the words "the scientific name the identifies the species," due to what the respondent noted as the variety and confusion concerning the use of common names and the problem of proper identification using those names.

Service Response

The Service finds merit in this suggestion but will not make any additional changes to this section at this time in order to avoid making the revision to the marking requirement overly burdensome on wildlife shippers.

Comments Pertaining to 50 CFR 14.91 License Requirements

Many comments were received regarding § 14.91. Several wildlife importers agreed with the requirement that all persons engaged in the business as an importer or exporter of wildlife obtain a valid import/export license, and that no exemption by class or threshold dollar amount should be provided. One respondent questioned, with regard to § 14.91(c)(5), whether the requirement was to include a taxidermist who is not the "importer of record" but is a direct recipient of hunting trophies taken by the "importer of record."

Service Response

This section requires certain persons who engage in the enumerated activities to hold a valid Service import/export license, including taxidermists. If a

taxidermist is importing or exporting wildlife for commercial purposes as the "importer or exporter of record," then a license is required. No license is required if a taxidermist is the mere recipient of wildlife or delivery point for a hunter acting as "importer or exporter of record," since the actual importing and exporting is arranged and paid for by the hunter himself.

Comments

Several comments were received from trappers in Alaska pertaining to this section. Many of these respondents expressed concern with the proposed change that would require them to obtain a license to export furs to Canada. Many of these trappers, according to the respondent, are part-time operators who did not previously meet the \$25,000.00 threshold license requirement. Many commenters believed that this proposal was unwarranted due to the fact that they currently have to obtain CITES permits and non-designated port permits. Several fur industry representatives were concerned about the regulations as they would apply to the shipment of furs and were opposed to the elimination of the \$25,000.00 threshold. Many believed that the added cost of this requirement was not warranted. Several respondents were concerned about the effects of the Service's license requirements on small importers or exporters. One respondent thought that small import or export business should not be required to obtain licenses. One respondent requested the duration of an import/export license in § 14.93(d) to be changed to a period of two years to reduce costs incurred by smaller importers.

Service Response

Clearly, fur trappers exporting furs from the United States are doing so with a commercial intent. Therefore, those persons are "engage[d] in business as an importer or exporter of wildlife," whether they do so on a full-time or part-time basis. Moreover, although the Service recognizes that the elimination of the \$25,000 threshold will impose additional costs on some small importers and exporters, the revised licensing system will more accurately reflect the Service's costs in providing inspection services.

Comments

One respondent inquired as to whether the proposed regulation changes were in compliance with the "Regulatory Flexibility Act," which establishes procedural requirements for Federal agencies to determine whether a

particular regulation is having a significant economic effect on a substantial number of small entities. This law is intended to ensure that laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those small entities.

Service Response

The Service has determined that this regulatory change will not have a significant economic effect on a substantial number of small entities as required by the Regulatory Flexibility Act (See Required Determinations).

Comments

Many respondents representing scientific institutions had misunderstandings concerning the license requirement for noncommercial, scientific shipments. Many were concerned that they would now be presumed to be commercial under the presumption of commercial intent provided within the definition of commercial in § 14.4.

Service Response

The Service clearly intends to exclude scientific specimens from the license and designated port requirements unless those scientific specimens are imported or exported for primarily commercial purposes. The exceptions contained at § 14.24 apply to dead, preserved, dried, or embedded scientific specimens imported or exported by accredited scientists or accredited scientific institutions for research purposes only. The license requirement will apply to those importers or exporters of scientific specimens whose intent is commercial.

Comments

One environmental education company and several animal advocacy groups suggested that convicted wildlife violators should be prohibited from obtaining an Import/Export license. The respondent further suggested that any license already issued should be revoked by the Service upon the individual or organization's conviction.

Service Response

Provisions for the revocation or suspension of permits or licenses are contained at 50 CFR part 13.

Comments Pertaining to 50 CFR 14.92 Exception to License Requirements

Numerous comments were received regarding § 14.92. One Service employee

responding in a private capacity requested a change in § 14.92(a)(3) to require importers to document their claim that certain imported items are "ranchled," meaning the item was derived from ranchled-raised wildlife. The respondent believed that many such shipments are routinely declared as ranchled to circumvent fee requirements. Another respondent suggested deleting this exception entirely. The respondent explained that this exception was first established to assist World War II veterans operating fur ranches as a commercial business. The respondent noted that other commercial businesses dealing with captive-raised wildlife have not been afforded a similar exception. One respondent suggested that § 14.92(a)(6) be amended to include export within the exception provided to exempt pearls imported or exported for commercial purposes.

Service Response

The Service finds merit in the above responses but will not make the changes to § 14.92(a)(3) regarding furbearers born and bred in captivity at this time due to the prevalence of ranchled furs in the fur industry, and due the Service's ability to verify whether or not furs have in fact been taken from the wild and portrayed as captive bred. The Service also finds merit in the addition of the word "exported" to § 14.92(a)(6) to exempt pearls exported for commercial purposes from the license requirement. The Service has made the appropriate revision to this section in response to comments received.

Comments

Numerous respondents representing wildlife importers and exporters requested that the Service add the words, "for-profit zoological institutions and theme parks" to this section to provide for when importation or exportations are for educational or exhibition purposes and not for resale. One respondent representing the falconry community requested that falconers, licensed pursuant to part 21 or by the nation of permanent residence, importing or exporting legally held raptors for falconry purposes and not for purchase, sale, barter, or transfer of such raptors, be included as an exemption to this license requirement in § 14.92(b).

Service Response

The Service believes that it has adequately addressed the most common exceptions to the license requirement in this section. The Service believes that to categorically exempt falconers or "for-profit zoological institutions and theme

parks" from the license requirement would be inappropriate since these activities can involve a commercial purpose. The exceptions listed in this part represent longstanding exceptions to several regulatory requirements of the Service. If falconers or zoological institutions are not engaged in the business of importing or exporting wildlife, as defined at § 14.91(b), then the license requirement will not apply.

Comments Pertaining to 50 CFR 14.94-Fees

Numerous comments were received on the issue of user fees provided for in § 14.94 Fees. This section establishes the Service fee schedule for a variety of services provided by the Service to importers and exporters of wildlife.

Many comments were directed specifically at the requirements of § 14.94(a)(1), which provides that an overtime fee may be charged, in addition to the inspection fee, for certain importations or exportations of wildlife, where the wildlife being imported or exported is part of a commercial shipment. One respondent expressed concern that the Service would not be charging overtime fees for noncommercial shipments, i.e., personal pets, or shipments by scientific non-profit institutions.

Many respondents expressed concern with the proposed \$55.00 inspection fee and questioned whether such a fee would apply to scientific specimens imported for research purposes. Many respondents believed that this would present them with a significant problem considering their limited operating budgets. Several representatives from foreign scientific institutions were concerned with the imposition of inspection fees for scientific specimens, believing that such shipments would now be considered as presumptively commercial under the Service's revised definition of commercial.

One respondent suggested that the calculation of the inspection fees should be based on 5% of the declared value of the shipment with a minimum level of \$100.00 per inspection. The monies collected, according to the respondent, should then be used to increase the number of physical inspections performed. The U.S. taxpayer, as the respondent noted, should not be subsidizing the wildlife import and export business. Another respondent suggested that the Service adopt an overtime fee schedule consistent with other regulatory agencies. One respondent was concerned as to the collection of fees by the Service for commercial shipments made via the mail. The respondent wondered

whether such items would be subject to a Service refusal of clearance while the Service is awaiting payment.

Several of the respondents were concerned about the application of overtime fees as provided in § 14.94(b), as such fees relate to after-hour noncommercial importations. Respondents expressed concern regarding the Service's increase in inspection fees while at the same time reducing the license fee to commercial operators. This, as one respondent expressed, seemingly discriminates against the noncommercial importers in favor of commercial users. A respondent noted that the preamble background information, found in the Federal Register notice (September 14, 1994; 59 FR 47214) states that noncommercial shipments and shipments by persons exempt from the license requirements are not to be charged an inspection fee, but may be charged "overtime costs" incurred at the specific request of the importer or exporter. The respondent further noted that under § 14.94(a)(1) overtime fees apply only to "commercial shipments."

Service Response

The Service appreciates these comments because it points out a deficiency in the proposed rule which erroneously tied overtime fees to "commercial shipments." The Service clearly intends for overtime fees to apply to importers and exporters of wildlife who request clearance outside of normal work hours, regardless of commercial or noncommercial status. The language in the proposed rule which erroneously linked overtime fees to those holding import/export licenses may have suggested to the respondents that the Service was "discriminating" against noncommercial importers. Section 14.94(b) has been revised appropriately to reflect the Service's intent and in response to commenters concerns. Paragraph (b) has been revised in this final rule to reflect that any importer or exporter requiring clearance by a Service Officer who requests that an inspection be done outside of normal work hours will be charged an overtime fee in accordance with the fee schedule found in § 14.94(d). The structure of the fee schedule at § 14.94(d) has also been redesigned in this final rule to make the applicability of the new fees clearer and less confusing for the public. The fees themselves will remain as proposed for the reasons stated.

Comments

Many commercial importers expressed concern with the proposed increase in inspection fees. One

representative of a wildlife import/export business complained that the average cost of \$55 to process a shipment was not valid and that a flat, per-shipment fee is not the best method. The respondent further suggested that the Service adopt a fee schedule similar to that used by Customs which uses an "ad valorem" with flat fee minimum/reimbursable overtime. One respondent noted that at the John F. Kennedy International Airport tropical fish shipments routinely arrive on Sundays. The respondent questioned why such fees were necessary, when other Federal regulatory agencies schedule employees to work on Sunday without charging higher fees. The Service, as the respondent further noted, should be more flexible in scheduling their Inspector work hours to fit the needs of individual ports. Several importers requested that a cap on importation filing fees of \$1250.00 annually be placed on smaller importers. Another respondent similarly suggested eliminating the fee for, small business which do not import more than \$20,000.00 annually. Another respondent suggested that the Service eliminate the fee for reexports for, as the respondent explained, the importer had been charged originally without the shipment having been changed.

Service Response

The Service acknowledges these concerns and is attempting, through this revision, to maintain the most efficient inspection program possible without allowing its fee structure to become overly burdensome to smaller importers. The analyses of the Service's inspection program mentioned in the proposed rule clearly indicate a need to raise inspection fees and overtime rates to be commensurate with costs incurred by the Service. Most ports, both designated and non-designated, are not staffed to allow for the inclusion of "regular hours" on weekends or holidays or after normal business hours, which may require certain importers or exporters to pay more for inspections done at these hours. The Service has, in the past, examined the "ad valorem" method of reimbursement and has determined that a flat fee is the best method, since actual work required to inspect wildlife shipments does not correlate well with the value of the shipment. In other words, shipments of high value do not always require Wildlife Inspectors to perform more work. The Service will monitor the collection of fees closely and in the event fees generate sufficient revenue to pay for additional staffing at certain ports to allow for expanded

hours of inspection, the Service will respond accordingly.

Comments

One response was received with regards to the Service billing of an overtime inspection in which three wildlife shipments were inspected. The respondent noted that the charges for the three inspections were not prorated over the three shipments but all three received the same full charge. The respondent suggested the Service prorate the charge for multiple importations and incorporate a 1 hour minimum overtime charge. One respondent noted that in his opinion the fees were so high with regards to exportations that it seemed to constitute a "tax" on exportations which, in his words, was unconstitutional. One exporter commented that most of his business is exporting the same or like item over and over. His inspection consists of sending in his fee and 3-177 with his shipments never being physically inspected. He suggests reducing or eliminating this repetitive process but gave no suggestions on how this might be accomplished.

Service Response

As noted in the proposed rule the Service is merely attempting to recoup costs incurred in the inspection process by adjusting its fee schedule in this final rule. In those instances, as described by the commenter, when several shipments are inspected outside normal work hours or multiple shipments are inspected for one importer on multiple entries, the Service, by policy, does not prorate associated charges. However, in response to commenter's concerns the Service has added an exception at § 14.94(b)(4) to allow for multiple shipments consigned to the same importer/exporter and inspected at one location on overtime, to pay one minimum hourly overtime fee at designated ports. The inspection fee will still apply to each shipment.

Comments

Many comments were received from the animal welfare community that requested increased inspections at port of Miami and that the Service should increase fees to a minimum of \$100 to pay for the increased cost of law enforcement personnel. Many comments were received from representatives of scientific institutions concerning fees. Many respondents representing scientific organizations expressed concern with the inspection fee of \$55.00 per shipment, noting that such a fee imposed upon wildlife imports and exports would be too high

for their budgets. Several respondents perceived the Service's proposal as an increased regulatory burden on the scientific community and believed it had the potential to "isolate" the United States from the international scientific community. Of particular concern to several scientists was the "trade" of non-endangered species. One respondent noted that he knew of no evidence that supported the notion that scientific collecting poses a threat to non-endangered insects. Another scientist similarly suggested that the Service, due to lack of funding and manpower, should concentrate its regulatory effort on threatened and endangered species and those covered by CITES.

Service Response

The Service notes that these commenters' concerns are precisely why an inspection program was established by the Service in 1975. In order for the Service to determine if a shipment contains threatened or endangered species, or CITES species, and consequently to determine if those species are affected by trade, the shipment must be inspected by qualified personnel who can make that determination. Again, noncommercial importers and exporters of wildlife will not be subject to fees unless requiring and requesting clearance outside of normal business hours, or using nondesignated ports.

Comments

Many respondents appeared to have some misunderstanding regarding the collection of fees and quoted the overtime schedule as if the overtime fees applied to all inspections. Other respondents suggested that higher rates be charged for inspections performed at non-designated ports. Many respondents opposed the reduction in the license fee but supported an increase in the inspection fee to cover the inspection program, to the extent that such an increase would allow for 100% inspection of shipments. One respondent suggested that the service should establish a mileage fee for overtime inspections similar to Customs. A pet industry spokesman suggested the increase in fees be phased in over time and requested that a more detailed justification of the hourly rate for inspections be made available when the final rule is published. Several respondents suggested that the inspection fee be prorated when multiple inspections are being performed for the same importer, primarily at non-designated ports. Numerous respondents requested the

Service justify the increased inspection fee.

Service Response

Under the new user fee structure the Service will charge a higher rate at nondesignated ports, in the form of an Administrative fee plus a 2 hour minimum charge, to cover the increased administrative costs associated with nondesignated ports. The Service has determined that inspection fees or administrative fees at nondesignated ports will not be prorated due to the obvious incentive given to importers/exporters to combine shipments, when the workload for wildlife inspectors would remain the same. The Service intends to charge mileage fees for inspections conducted at nondesignated ports with no permanent law enforcement staff present. The Service understands the concerns raised by respondents regarding justification of user fee increases, and refers to the following four studies, conducted since 1988 which recommended, and justified, fee increases in the inspection program: the Service, Division of Finance, findings and recommendations on review of the Law Enforcement Management Information System and Import/Export Fee Billing and Collection System, a 1988 user charges and collection report by the Department of the Interior Office of Inspector General, a 1991 Law Enforcement Functional Analysis Review, and a 1992 draft of the CITES Implementation Study prepared by Traffic USA, the trade monitoring group associated with the World Wildlife Fund.

Comments

Many respondents were concerned with the low numbers of physical inspections of wildlife shipments being imported into the United States. One respondent expressed support for the Service's regulation of imports and exports of wildlife and other products being imported for a commercial purpose, particularly, as the respondent noted, when such imports or exports involve threatened and endangered species.

Service Response

The Service anticipates an increase in the physical inspection rate of wildlife shipments on a nationwide basis, due, in part, to the increase in fees justified in the studies mentioned in this final rule. Fee adjustments allowing the Service to more accurately recover costs may also allow the Service to hire additional personnel.

Summary of Comments Received to the Supplemental Rule

On March 23, 1995, the Service published in the Federal Register (60 FR 15277) a supplemental proposed rule proposing additional changes to these parts. In response to this notice the Service received a total of 12 comments. These included 2 from associations, 2 from states, 3 from museums, 1 council, 1 union, 1 club, 1 university and a citizen. The comments were as follows:

One respondent noted an error in the definition section provided at § 14.4. The respondent noted that the term "accredited member of the American Zoological Association" was stated twice. The correct name according to the respondent is the American Zoo and Aquarium Association.

In regards to § 14.53(b)(2), one respondent noted that in his research during foreign explorations for natural enemies of targeted plant pests, which are collected and shipped to quarantine facilities, organisms are usually identified to a higher level of taxa than species. Identification of such collected materials, may not be available for a considerable period of time. Another respondent noted that although the original Lacey Act recognized the existence of the Federal Plant Pest Act, the new FWS regulations appear to overlook this provision.

Several comments pertained to the Service 3-177 form. One respondent suggested the Service make the reporting of dead specimens an annual or biannual report. One scientific institution noted that their collections do not specify whether the wildlife was taken as a result of sport hunting, and that, therefore, such collections should be given a blanket exemption for already deposited specimens. Another respondent was concerned with the perceived requirement that a scientific collector obtain a hunting license and worried that scientific collecting may be viewed as sport hunting.

One respondent observed that the Service's definition of scientist does not include retired professors or those at smaller colleges that do not have established public collections, who are generally considered amateurs in the field of entomology. Another respondent noted that dead specimens should be allowed to be transported freely (3-177 form only) without further clearance. One respondent requested that the Service automate the 3-177 form to streamline the process by downloading the data from each accredited institution twice annually. One respondent suggested that birds should not require authentication of

collecting and export permits from the country of origin each time they are transferred; that dead, non-endangered or CITES listed birds should have no restriction on importation; and that a 3-177 should not be needed for dead birds. Instead, the respondent noted that the paperwork could be kept at the institution and open for inspection at any time. Another respondent asked for additional time to respond to what the respondent characterized as a complicated piece of law.

Another respondent noted that if a specimen was procured for a scientific institution, the regulations that are applied to permit the legal import should be consistent across the board with no exceptions as to how it was acquired. Once a permit is issued, the respondent noted, the specimens covered by that permit should have the status of specimens that do not require a permit. Other respondents, however, saw no logical reason why scientific specimens legally taken as the result of sport hunting should be excluded from the exceptions provided. One respondent requested that the Service not require authentication of collecting and export permits from the country of origin each time they are transferred internationally. One respondent suggested that the Migratory Bird Office and Law Enforcement get together on a common definition of scientific institution to avoid two different standards. The only shipments that should require reporting to the Service, one respondent noted, should be those that contain species listed under CITES or the U.S. Endangered Species Act. One respondent requested that State and Federal government agencies should be exempt from requirements pertaining to permits and be given some kind of blanket import-export permit.

Service Response

The Service appreciates these comments and responds by stating that the Federal Government, in particular the Service, is bound by international treaty and domestic law to require certain types of documentation, reporting, declaration, and regulation as relates to the import and export of wildlife and wildlife products (including insects). The Service, in its revision of this part, has been responsive to the demands of the public while fulfilling its obligations under law. The Service believes that the modification of these regulations, in particular addressing the concerns of the scientific collecting community, have taken into account public concerns while fulfilling the Service's obligations.

Need for Final Rule Making

The Fish and Wildlife Service is updating the regulations for the importation, exportation, and transportation of wildlife. Definitions have been added and several errors and missing references have been corrected. Several ambiguities in the text have been restated for clarity. Changes were necessary in several sections for the purposes of identification of wildlife, to provide uniformity with the Customs Service, to more clearly articulate requirements, to circumscribe exceptions to requirements, and to provide for the safety of inspectors.

Changes in the Service import/export user fees policies and rates were made in order to recover the full costs of license and inspection services to require all commercial importers and exporters of wildlife and wildlife products to obtain an import/export license, to adjust the cost of a wildlife import/export license, to adjust the inspection fee charged to licensees at designated ports, and to adjust the administrative fee charged for each wildlife shipment cleared at a non-designated port.

Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service has received approval for collection of information under this regulation using the Declaration for Importation or Exportation of Fish or Wildlife form 3-177, approval number 1018-0012 which expires June 30, 1997, and using the Federal Fish and Wildlife License/Permit Application form 3-200, approval number 1018-0022 which expires January 31, 1997.

Information collection is accomplished under this part through the use of these two forms and is used to satisfy various requirements in this regulation, including, species and shipping information from the Declaration form 3-177, and licensing information from the Application form 3-200. The information requested on these forms is not being modified in this rule, however, changes are being made which will affect the number of persons or businesses required to file an Import/Export License Application form 3-200 to obtain an Import/Export License.

Changes also are being made in the exceptions granted to certain persons from the Declaration filing requirements.

The Declaration filing exceptions contained in this final rule will not result in any increased information

collection by the Service. However, those persons or businesses engaging in business as an importer or exporter of wildlife who may have previously been excepted from the license requirement, will now be required to file a 3-200 Application form with the Service in order to obtain an import/export license. This will result in increased use of an existing information collection. The information to be collected will include the applicant's name and complete address, type of business and description of the activity for which a license is required, principal officer information, location where activity under the license is conducted, and business, agency, or institutional affiliation of the applicant. The likely respondents to this collection of information will be persons engaging in business as importers or exporters of wildlife who are not currently licensed by the Service. This information will be used by the Service to determine the applicability of the license requirement, and to implement the licensing and fee collection process. This information collection will be required annually and will require approximately a 1.0 hour total annual reporting and recordkeeping burden per respondent. The Service estimates that the number of likely respondents will be approximately 700, making a total annual reporting and recordkeeping burden of 700 hours.

Economic Effects

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Service conducted a cost/benefit analysis in compliance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). Data for commercial imports and exports of wildlife and wildlife products for the 1994 calendar year were used to estimate the financial impact on commercial wildlife importers and exporters from the revised user fee schedule contained in the proposed rule and in this final rule. Calendar year 1994 data were chosen for the analysis for their completeness and because the Service feels that the commercial data for 1994 are typical of calendar year totals. The analysis shows that the Service processes approximately 70,000 wildlife and wildlife product imports and exports per year, and that of those shipments approximately 56,000 are imported or exported for commercial purposes. The 1994 data show that the Service issued approximately 1,700 commercial import/export licenses in 1994, and those licensees imported or

exported approximately 40,000 commercial shipments. These figures equate to approximately 23 commercial shipments per licensee per year. The total number of shipments made for commercial purposes (56,000) minus the number of commercial shipments made by licensees (40,000) equals 16,000 shipments made for commercial purposes by non-licensees that, presumably, meet one of the current licensing exceptions. The most likely exception in these cases would be the \$25,000 annual threshold requirement for obtaining a license. This exception is being eliminated in this final rule. By using the 23 shipments per licensee per year figure as representative of all commercial importers and exporters, the Service estimates that 700 non-licensed commercial importers and exporters shipping 16,000 shipments per year will be affected by the new license requirement. Based upon the 23 shipments per year figure, the 1,700 licensees currently paying \$25 per shipment in user fees and \$125 annual license fee are paying \$700 annually in user fees. Under this final rule those licensees will pay an additional \$615 based upon \$55 per shipment and a \$50 license fee, or \$1,315 annually in user fees. The 700 non-licensed commercial importers and exporters who are now exempt from the fee requirement also will pay \$1,315 per year based upon the 23 shipment per year average and the new user/license fees. As stated in this final rule, these fees will generate approximately \$2 million in additional user fees which will allow the Service to more closely recoup actual costs of the wildlife inspection program.

A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking will not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. The Department of the Interior is seeking to assess the least possible fee increase that will enable the Service to recoup its costs associated with the Service's Import/Export program. As discussed in the proposed rule, fees have not been increased since 1986. This fee increase will more closely align the Federal Government's operating cost with revenues. This rule will affect all importers and exporters equally and is expected to remove any competitive advantage enjoyed by unlicensed importers or exporters. Because of the modest cost involved, the fee increase is expected to have a minimal effect on those small entities as

defined in the Regulatory Flexibility Act.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that his rulemaking will not impose a cost of \$100 million or more in any given year or local or State governments or private entities.

National Environmental Policy Act (40 CFR part 1500)

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment was not prepared for this action. The action that is covered under a categorical exclusion from the National Environmental Policy Act procedures. An Environmental Action memorandum is on file at the Service's office in Arlington, Virginia. A determination has been made pursuant to section 7 of the Endangered Species Act that the revision of part 14 will not affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

Authorship

The originators of this final rule are Law Enforcement Specialist Paul McGowan and Special Agent John M. Neal, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation:

For the Reasons set out in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is amended as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-1, 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

Subpart B—Applications for Permits

2. Section 13.11 is amended by revising the table in (d)(4) to read as follows:

§ 13.11 Application procedures.

* * * * *
(d) * * *
(4) * * *

Type of permit	Fee
Import/Export License (Section 14.93).	\$50.
Marine Mammal (Section 18.31) Migratory Bird-Banding or marking (21.22).	\$100. None.
Bald or Golden Eagles (Part 22)	None.

* * * * *

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 19 U.S.C. 42; 31 U.S.C. 483(a).

2. A new § 14.4 entitled “Definitions” is added to subpart A to read as follows:

§ 14.4 Definitions.

In addition to definitions contained in Part 10 of this subchapter, in this part:

Accompanying personal baggage means all hand-carried items and all checked baggage of a person entering into or departing from the United States.

Accredited scientist means any individual associated with, employed by, or under contract to and accredited by an accredited scientific institution for the purpose of conducting biological or medical research, and whose research activities are approved and sponsored by the scientific institution granting accreditation.

Accredited scientific institutions means any public museum, public zoological park, accredited institution of higher education, accredited member of the American Zoo and Aquarium Association, accredited member of the American Association of Systematic Collections, or any State or Federal government agency that conducts biological or medical research.

Commercial means related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to quantity or weight. There is a presumption that eight or

more similar unused items are for commercial use. The Service or the importer/exporter/owner may rebut this presumption based upon the particular facts and circumstances of each case.

Domesticated animals includes, but is not limited to, the following domesticated animals that are exempted from the requirements of this subchapter B (except for species obtained from wild populations).

Mammals: Alpaca—*Lama alpaca*; Camel—*Camelus dromedarius*; Camel (Boghdi)—*Camelus bactrianus*; Cat (domestic)—*Felis domesticus*; Cattle—*Bos taurus*; Dog (domestic)—*Canis familiaris*; European rabbit—*Oryctolagus cuniculus*; Ferret (domestic)—*Mustela putorius*; Goat—*Capra hircus*; Horse—*Equus caballus*; Llama—*Lama glama*; Pig—*Sus scrofa*; Sheep—*Ovis aries*; Water buffalo—*Bubalus bubalus*; White lab mice—*Mus musculus*; White lab rat—*Rattus norvegicus*.

Fish (For export purposes only): Carp (koi)—*Cyprinus carpio*; Goldfish—*Carassius auratus*.

Birds: Chicken—*Gallus domesticus*; Ducks & geese—domesticated varieties; Guinea fowl—*Numida meleagris*; Peafowl—*Pavo cristatus*; Pigeons (domesticated)—*Columba livia domestica*; Turkey—*Meleagris gallopavo*; Domesticated or Barnyard Mallards include: Pekin; Aylesbury; Bouen; Cayuga; Gray Call; White Call; East Indian; Crested; Swedish; Buff Orpington; Indian Runner; Campbell; Duclair; Merchtem; Termonde; Magpie; Chinese; Khaki Campbell.

Insects: Crickets, mealworms, honeybees (not to include Africanized varieties), and similar insects that are routinely farm raised.

Other Invertebrates: Earthworms and similar invertebrates that are routinely farm raised.

Export means to depart from, to send from, to ship from, or to carry out of, or attempt to depart from, to send from, to ship from, or to carry out of, or to consign to a carrier in any place subject to the jurisdiction of the United States with an intended destination of any place not subject to the jurisdiction of the United States, whether or not such departure, sending, or carrying, or shipping constitutes an exportation within the meaning of the Custom laws of the United States. When a passenger leaving the jurisdiction of the United States enters the designated international area of embarkation of an airport, all accompanying personal hand-carried items and checked baggage will be regarded as exports.

Import means to land on, bring into, or introduce into, or attempt to land on,

bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

3. Section 14.15 is amended by revising paragraph (a) to read as follows:

§ 14.15 Personal baggage and household effects.

(a) Any person may import into or export from the United States at any Customs port wildlife products or manufactured articles that are not intended for commercial use and are used as clothing or contained in accompanying personal baggage. However, this exception to the designated port requirement does not apply to any raw or dressed fur; raw, salted, or crusted hide or skin; game trophy; or to wildlife requiring a permit pursuant to part 16, 17, 18, 21, or 23 of this subchapter B.

* * * * *

4. Section 14.21 is revised to read as follows:

§ 14.21 Shellfish and fishery products.

(a) (1) *General*. Except for wildlife requiring a permit pursuant to part 17 or 23 of this subchapter, shellfish and fishery products imported or exported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes may enter or exit at any Customs port.

(2) Except for wildlife requiring a permit pursuant to part 17 or part 23 of this subchapter, live aquatic invertebrates of the Class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof may be exported for purposes of propagation, or research related to propagation, at any Customs port.

(b) *Pearls*. Except for wildlife requiring a permit pursuant to part 17 or 23 of this subchapter, pearls imported or exported for commercial purposes may enter or exit the United States at any Customs port of entry. For the purposes of this Part, all references to the term shellfish and fishery products will include pearls.

5. Section 14.22 is revised to read as follows:

§ 14.22 Certain antique articles.

Any person may import at any Customs Service port designated for such purpose, any article (other than scrimshaw, defined in 16 U.S.C 1539(f)(1)(B) and 50 CFR 217.12 as any art form that involves the etching or

engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea) that is at least 100 years old, is composed in whole or in part of any endangered or threatened species listed under § 17.11 or § 17.12 of this subchapter, and has not been repaired or modified with any part of any endangered or threatened species on or after December 28, 1973.

6. A new § 14.24 is added to read as follows:

§ 14.24 Scientific specimens.

Except for wildlife requiring a permit pursuant to parts 16, 17, 18, 21, 22 or 23 of this subchapter, dead, preserved, dried, or embedded scientific specimens or parts thereof, imported or exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes may enter or exit through any U.S. Customs port, or may be shipped through the international mail system. *Provided*, that this exception will not apply to any specimens or parts thereof taken as a result of sport hunting.

7. Section 14.32 is amended by revising paragraph (c)(2) to read as follows:

§ 14.32 Permits to import or export wildlife at non-designated port to minimize deterioration or loss.

* * * * *

(c) * * *

(2) Permittee must pay fees in accordance with § 14.94.

* * * * *

8. Section 14.33 is amended by revising paragraph (c)(2) to read as follows:

§ 14.21 Permits to import or export wildlife at non-designated port to alleviate undue economic hardship.

* * * * *

(c) * * *

(2) Permittee must pay fees in accordance with § 14.94.

* * * * *

9. Section 14.52 is amended by revising paragraphs (a), (b), the introductory text of paragraph (c), paragraphs (c)(3), and (c)(4) and by adding paragraph (c)(5) to read as follows:

§ 14.52 Clearance of wildlife.

(a) Except as otherwise provided by this subpart, a Service officer must clear all wildlife imported into the United States prior to release from detention by Customs officers. A Service officer must clear all wildlife to be exported from the United States prior to the physical loading of the merchandise on a vehicle

or aircraft, or the containerization or palletizing of such merchandise for export, unless a Service officer expressly authorizes otherwise. Such clearance does not constitute a certification of the legality of an importation or exportation under the laws or regulations of the United States.

(b) An importer/exporter or his/her agent may obtain clearance by a Service officer only at designated ports (§ 14.12), at border ports (§ 14.16), at special ports (§ 14.19), or at a port where importation or exportation is authorized by a permit issued under subpart C of this part. An importer/exporter must return forthwith any wildlife released without a Service officer's clearance or clearance by Customs for the Service under authority of § 14.54 to a port where clearance may be obtained pursuant to this subpart.

(c) To obtain clearance, the importer, exporter, or the importer's or exporter's agent will make available to a Service officer or a Customs officer acting under § 14.54:

* * * * *

(3) All permits or other documents required by the laws or regulations of any foreign country;

(4) The wildlife being imported or exported; and

(5) Any documents and permits required by the country of export or re-export for the wildlife.

10. Section 14.53 is revised to read as follows:

§ 14.53 Detention and refusal of clearance.

(a) *Detention.* Any Service officer, or Customs officer acting under § 14.54, may detain imported or exported wildlife and any associated property. As soon as practicable following the importation or exportation and decision to detain, the Service will mail a notice of detention by registered or certified mail, return receipt requested, to the importer or consignee, or exporter, if known or easily ascertainable. Such notice must describe the detained wildlife or other property, indicate the reason for the detention, describe the general nature of the tests or inquiries to be conducted, and indicate that if the releasability of the wildlife has not been determined within 30 days after the date of the notice, or a longer period if specifically stated, that the Service will deem the wildlife to be seized and will issue no further notification of seizure.

(b) *Refusal of clearance.* Any Service officer may refuse clearance of imported or exported wildlife and any Customs officer acting under § 14.54 may refuse clearance of imported wildlife when there are responsible grounds to believe that:

(1) A Federal law or regulation has been violated;

(2) The correct identity and country of origin of the wildlife has not been established (in such cases, the burden is upon the owner, importer, exporter, consignor, or consignee to establish such identity by scientific name to the species level or, if any subspecies is protected by the laws of this country or the country of origin to the subspecies level);

(3) Any permit, license, or other documentation required for clearance of such wildlife is not available, is not currently valid, has been suspended or revoked, or is not authentic;

(4) The importer, exporter, or the importer's or exporter's agent has filed an incorrect or incomplete declaration for importation or exportation as provided in § 14.61 or § 14.63; or

(5) The importer, exporter, or the importer's or exporter's agent has not paid any fee or portion of balance due for inspection fees required by § 14.93 or § 14.94, or penalties assessed against the importer or exporter under 50 CFR part 11. This paragraph does not apply to penalty assessments on appeal in accordance with the provisions of part 11.

11. Section 14.54 is amended by revising paragraphs (a), and adding paragraph (f) to read as follows:

§ 14.54 Unavailability of Service officers.

(a) *Designated ports.* All wildlife arriving at a designated port must be cleared by a Service officer prior to Customs clearance and release. When importers or their agents expect live or perishable shipments of wildlife or wildlife products or request inspection at the time of arrival, they must notify the Service at least 48 hours prior to the estimated time of arrival. However, where a Service officer is not available within a reasonable time, Customs Officers may clear live or perishable wildlife subject to post-clearance inspection and investigation by the Service.

* * * * *

(f) *Exports.* Exporters or their agents must notify the Service and make the shipment available for inspection at least 48 hours prior to the estimated time of exportation of any wildlife.

12. Section 14.55 is amended by revising the introductory text of the section and by adding paragraph (d) to read as follows:

§ 14.55 Exceptions to clearance requirements.

Except for wildlife requiring a permit pursuant to part 17 or 23 of this subchapter B, clearance is not required

for the importation of the following wildlife:

* * * * *

(d) Dead, preserved, dried, or embedded scientific specimens or parts thereof, imported or exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes. *Except:* That this exception will not apply to any specimens or parts thereof taken as a result of sport hunting.

13. Section 14.61 is revised to read as follows:

§ 14.61 Import declaration requirements.

Except as otherwise provided by the regulations of this subpart, importers or their agents must file with the Service either a completed Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177), signed by the importer or the importer's agent, or an electronic Form 3-177, filed through the United States Customs Service Automated Commercial System (ACS) by an authorized Customs broker using the Automated Broker Interface (ABI), upon the importation of any wildlife at the place where Service clearance under § 14.52 is requested. However, wildlife may be transhipped under bond to a different port for release from custody by Customs Service officers under 19 U.S.C. 1499. For certain antique articles as specified in § 14.22, importers or their agents must file a Form 3-177 with the District Director of Customs at the port of entry prior to release from Customs custody. Importers or their agents must furnish all applicable information requested on the Form 3-177 and the importer, or the importer's agent, must certify that the information furnished is true and complete to the best of his/her knowledge and belief.

14. Section 14.62 is amended by revising paragraph (a), by removing paragraph (b)(2) and by redesignating existing paragraphs (b)(3) and (b)(4) as (b)(2) and (b)(3) respectively, and by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 14.62 Exceptions to import declaration requirements.

(a) Except for wildlife requiring a permit pursuant to part 17 or 23 of this subchapter B, an importer or his/her agent does not have to file a Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) for importation of shellfish and fishery products imported for purposes of human or animal consumption, or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes;

(b) * * *

(2) Wildlife products or manufactured articles that are not intended for commercial use and are used as clothing or contained in accompanying personal baggage, except that an importer or his/her agent must file a Form 3-177 for raw or dressed furs; for raw, salted, or crusted hides or skins; and for game or game trophies; and

(3) Wildlife products or manufactured articles that are not intended for commercial use and are a part of a shipment of the household effects of persons moving their residence to the United States, except that an importer or his/her agent must file a declaration for raw or dressed furs and for raw, salted, or crusted hides or skins.

* * * * *

(c) *General declarations for certain specimens.* Notwithstanding the provisions of 14.61 and except for wildlife included in paragraph (d) of this section, an importer or his/her agent may describe in general terms on a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3-177) scientific specimens imported for scientific institutions for taxonomic, systematic research, or faunal survey purposes. An importer or his/her agent must file an amended Form 3-177 within 180 days after filing of the general declaration with the Service. The declaration must identify specimens to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information. The Director may grant extensions of the 180-day period.

(d) Except for wildlife requiring a permit pursuant to part 16, 17, 18, 21, 22 or 23 of this subchapter, an importer or his/her agent does not have to file a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3-177) at the time of importation for shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, imported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes. An importer or his/her agent must file a Form 3-177 within 180 days of importation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the importation occurs. The declaration must identify the specimens to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and must declare the country of origin. *Except:* That this exception will not apply to any specimens or parts thereof taken as a result of sport hunting.

15. Section 14.64 is amended by revising paragraphs (a), (b)(1), (b)(2) and by adding (b)(3) to read as follows:

§ 14.64 Exceptions to export declaration requirements.

(a) Except for wildlife requiring a permit pursuant to Part 17 or 23 of this subchapter B, an exporter or his/her agent does not have to file a Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) for the exportation of shellfish and fishery products exported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes, and does not have to file for the exportation of live aquatic invertebrates of the Class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof exported for purposes of propagation, or research related to propagation.

(b) * * *

(1) Wildlife that is not intended for commercial use where the value of such wildlife is under \$250;

(2) Wildlife products or manufactured articles, including game trophies, that are not intended for commercial use and are used as clothing or contained in accompanying personal baggage or are part of a shipment of the household effects of persons moving their residence from the United States; and

(3) Shipments of dead, preserved, dried, or embedded scientific specimens or parts thereof, exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes. An exporter or his/her agent must file a Form 3-177 within 180 days of exportation with the appropriate Assistant Regional Director—Law Enforcement in the Region where the exportation occurs. The declaration must identify the specimens to the most accurate taxonomic classification reasonably practicable using the best available taxonomic information, and must declare the country of origin. *Except:* That this exception will not apply to any specimens or parts thereof taken as a result of sport hunting.

16. Section 14.81 is revised to read as follows:

§ 14.81 Marking requirement.

Except as otherwise provided in this subpart, no person may import, export, or transport in interstate commerce any container or package containing any fish or wildlife (including shellfish and fishery products) unless he/she marks each container or package

conspicuously on the outside with both the name and address of the shipper and consignee. An accurate and legible list of its contents by species scientific name and the number of each species and whether or not the listed species are venomous must accompany the entire shipment.

17. Section 14.82 is amended by revising paragraphs (a)(1)(ii)(A), (1)(2), and (a)(3) to read as follows:

§ 14.82 Alternatives and exceptions to the marking requirement.

- (a) * * *
(1)(i) * * *
(ii) * * *

(A) The common name that identifies the species (examples include: Chinook (or king) salmon; bluefin tuna; and whitetail deer) and whether or not the listed species is venomous; and

* * * * *

(2) Affixing the shipper's wildlife import/export license number preceded by the three letters "FWS" on the outside of each container or package containing fish or wildlife, if the shipper has valid wildlife import/export license issued under authority of 50 CFR part 14. For each shipment marked in accordance with this paragraph, the records maintained under § 14.93(c) must include a copy of the invoice, packing list, bill of lading, or other similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section. *Except*, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label. However, each subcontainer containing a venomous species must be clearly marked as venomous.

* * * * *

18. Section 14.91 is amended by revising paragraph (a) and (c) to read as follows:

§ 14.91 License requirement.

(a) *Prohibition.* Except as otherwise provided in this subpart, it is unlawful for any person to engage in business as an importer or exporter of wildlife without first having obtained a valid import/export license from the Director.

* * * * *

(c) *Certain persons required to be licensed.* The definition in paragraph (b) of this section includes, but is not limited to, persons who import or

export wildlife for commercial purposes:

(1) For trade, sale, or resale, such as animal dealers, animal brokers, pet dealers, pet suppliers, and laboratory research suppliers;

(2) In the form of fur for tanning, manufacture, or sale, such as fur trappers, dealers, brokers, and manufacturers;

(3) In the form of hides and skins for tanning, manufacture, or sale, such as hide, skin, and leather dealers, brokers, manufacturers, and processors;

(4) In the form of products (such as garments, bags, shoes, boots, jewelry, rugs, or curios) for sale, such as wholesalers, retailers, distributors, and brokers;

(5) As taxidermists in connection with the mounting processing, or storage of trophies or specimens;

(6) As freight forwarders; and

(7) In the form of food products taken from populations of non-domesticated animals.

19. Section 14.92 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) and adding (a)(5) and (a)(6), and by revising (b)(1), (b)(2), (b)(4), and (b)(5) and by removing paragraph (b)(6) to read as follows:

§ 14.92 Exceptions to license requirements.

(a) * * *

(1) Shellfish and fishery products that do not require a permit under Part 17 or 23 of this subchapter B and that are imported or exported for purposes of human or animal consumption;

(2) Shellfish and fishery products that do not require a permit under part 17 or 23 of this subchapter B and that are taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes;

(3) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul and their products if the animals have been bred and born in captivity;

(4) Live farm-raised fish and farm-raised eggs of species not requiring a permit under part 17 or 23 of this subchapter B that are being exported;

(5) Live aquatic invertebrates of the Class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof exported for purposes of propagation or research related to propagation; and

(6) Pearls imported or exported for commercial purposes.

(b) * * *

(1) Common carriers when engaged as transporters and not as importers or exporters of record;

(2) Custom house brokers when engaged as agents and not as importers or exporters of record;

* * * * *

(4) Federal, State, or municipal agencies; and

(5) Circuses importing or exporting wildlife for exhibition purposes only and not for purchase, sale, barter, or transfer of such wildlife.

20. Section 14.93 is amended by revising paragraphs (c)(4), and (c)(5) to read as set forth below, and by removing paragraph (f).

§ 14.93 License application procedure, conditions, and duration.

* * * * *

(c) * * *

(4) Subject to applicable limitations of law, licensees must provide duly authorized Service officers at all reasonable times, upon notice, access to the licensee's places of business and give an opportunity to examine the licensee's inventory of imported wildlife and the records required to be kept under paragraph (c)(1) of this section, and give an opportunity to copy such records;

(5) Licensees must, upon written request by the Director, submit within 30 days of such request a report containing the information required to be maintained by paragraph (c)(1) of this section.

* * * * *

21. Section 14.94 is added to read as follows:

§ 14.94 Fees.

(a) *License and inspection fees.* The Service will impose a yearly fee for a license pursuant to § 14.93. In addition, each licensee must pay an inspection fee for each wildlife shipment imported into or exported from the United States at a designated port.

(b) *Designated port overtime fees.* The Service may charge importers or exporters of wildlife, regardless of being licensed as a commercial importer or exporter, a fee for overtime for inspections that begin before normal working hours, that extend beyond normal working hours, or are on a holiday, Saturday, or Sunday if the importer/exporter requested that the inspection be performed outside normal work hours. Overtime fees consist of an increased hourly rate equal to 1½ times the average hourly rate of a journeyman level wildlife inspector. Overtime fees will be in addition to inspection fees imposed for license holders at designated ports. If an importer/exporter presents a shipment for inspection during normal work hours but the Service cannot perform the inspection

during normal work hours on that day, the service will give the importer/exporter the option of performing the inspection later during normal work hours or charging for overtime. The Service's ability to perform inspections during overtime hours will depend on the availability of Service personnel. The Service will use the following parameters when calculating the overtime fee:

(1) Inspection overtime commences when a Service officer departs that officer's residence or official duty station enroute to the inspection site or at the end of normal work hours. Inspection overtime terminates when the officer returns to the point of departure or official duty station or when the inspection is completed, whichever occurs later.

(2) For an inspection at a designated port beginning less than 1 hour before normal work hours, the Service will charge 1 hour of time, at an hourly rate of 1½ times the average hourly rate of a journeyman level Wildlife Inspector. For all other overtime inspections at a designated port the Service will charge a minimum of 2 hours of time, at an hourly rate of 1½ times the average hourly rate of a journeyman level Wildlife Inspector, *except* that for all inspections performed on a federal holiday the Service will charge a minimum of 2 hours at twice the average hourly rate of a journeyman level Wildlife Inspector.

(3) The Service will charge any inspection time in excess of the 2-hour minimum in quarter hour increments at the same hourly rate as the first 2 hours. The Service will round up inspection time of 10 minutes or more to the next quarter hour and will disregard any time less than 10 minutes.

(4) The fee schedule will apply to all inspections regardless of importer/exporter of record, *except*, that the Service will charge multiple shipments consigned to the same importer/exporter and inspected at one location one 2-hour minimum or actual time, whichever is greater.

(c) *Nondesignated port fees.* The Service will charge permittees issued permits under subpart C of this part, and licensed commercial importers and exporters a fee for inspections at nondesignated ports. The fees consist of a flat administrative fee plus a minimum of two hours of time at staffed nondesignated ports. The Service will use the following parameters when calculating fees:

(1) During normal working hours the Service will charge permittees issued permits under subpart C of this part, regardless of being licensed as a commercial importer or exporter, an administrative fee plus a minimum of 2 hours of time at the average hourly rate of a journeyman level wildlife inspector. The Service will charge permittees requesting clearance outside normal working hours, including Saturday and

Sunday, an administrative fee plus a minimum of 2 hours of time at 1½ times the average hourly rate of a journeyman level wildlife inspector, *except* that for all inspections performed on a federal holiday the Service will charge a minimum of 2 hours at twice the average hourly rate of a journeyman level wildlife inspector.

(2) The Service will charge any inspection time in excess of the 2-hour minimum in quarter hour increments at the same hourly rate as the first 2 hours. The Service will round up inspection time of 10 minutes or more to the next quarter hour and will disregard any time less than 10 minutes.

(3) The Service will not charge importers or exporters who are not required to have a permit under subpart C of this part, *except* that the Service will charge licensed importers or exporters an administrative fee only during normal working hours, and overtime hourly rates and minimums will apply outside normal working hours.

(4) For inspections performed under a permit issued under subpart C of this part at nondesignated ports with no permanent Service law enforcement staff, the Service will charge all costs associated with inspection and clearance, including, salary, travel and transportation costs, and per diem.

(d) *Schedule.*

General Fees

Import/Export license fee	\$50 per year.
Inspection fee	\$55 per shipment.

Inspection Fee Schedule

Designated ports: Licensees:	
Inspections during normal work hours	\$55 Inspection fee.
Inspections beginning less than 1 hour before normal work hours	\$55 Inspection fee plus \$30.
Inspections beginning more than 1 hour before normal work hours	\$55 Inspection fee plus 2 hour minimum at \$30/hr.
Inspections after normal work hours (including Saturdays and Sundays)	\$55 Inspection fee plus 2 hour minimum at \$30/hr.
Inspections on federal holidays	\$55 Inspection fee plus 2 hour minimum at \$40/hr.
Designated ports: Nonlicensees:	
Inspection during normal work hours	No charge.
Inspections beginning outside normal work hours	2 hour minimum at \$30/hr.
Staffed nondesignated ports: Subpart C permit holders, regardless of license status:	
Inspections during normal work hours	\$55 Administrative fee plus 2 hour minimum at \$20/hr.
Inspections beginning outside normal work hours (including Saturdays and Sundays)	\$55 Administrative fee plus 2 hour minimum at \$30/hr.
Inspections on federal holidays	\$55 Administrative fee plus 2 hour minimum at \$40/hr.

Nonstaffed nondesignated ports:	\$55 Administrative fee plus all costs associated with inspection and clearance.
Staffed nondesignated ports: No subpart C permit required (Border/Special Ports):	
Import/export license holders	\$55 Administrative fee.
All others	No charge.

(1) The Service will not refund any fee or any portion of any license or inspection fee or excuse payment of any fee because importation or clearance of wildlife shipment is refused for any reason.

(2) [Reserved]

Dated: February 6, 1996.

George T. Frampton Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 960126016-6121-04; I.D. 061196C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure from Cape Arago, OR, to the Oregon-California Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Cape Arago, OR, to the Oregon-California border was closed at 1700 hours, June 5, 1996. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 5,300 chinook salmon for the area has been reached. This action is necessary to conform to the preseason announcement of the 1996 management measures and is intended to ensure conservation of chinook salmon.

DATES: Effective 1700 hours local time, June 5, 1996, through 2400 hours local time, June 30, 1996. Comments will be accepted through July 5, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary of Commerce will, under 50 CFR 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that the 1996 commercial fishery in the area between Cape Arago, OR, and the Oregon-California border would open on May 1 and continue through June 30 or attainment of the 5,300 chinook salmon quota, whichever occurred first.

The best available information on June 3 indicated that commercial catches in this area totaled about 4,300 chinook salmon through June 2. Based on the recent catch and effort levels, NMFS determined to close the commercial fishery at 1200 hours, June

4. The U.S. Coast Guard Notice to Mariners was not broadcast, however, until Wednesday afternoon, June 5. Therefore, the Federal closure was not effective until 1700 hours, June 5. The season remains closed under the terms of the preseason announcement of the 1996 management measures.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this closure. The State of Oregon closed its commercial fishery between Cape Arago and the Oregon-California border at 1200 hours on June 4. As provided by the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 1700 hours local time, June 5, 1996, by telephone hotline number 206-526-6667 or 800-662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1996.

Richard W. Surdi,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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