

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.227 is amended by adding a paragraph heading to paragraph (a), designating the text following the paragraph heading as paragraph (a)(1), redesignating paragraphs (b) and (c) as paragraphs (a)(2) and (a)(3), respectively, and by adding and reserving with paragraph headings new paragraphs (b), (c) and (d).

3. Section 180.227 is further amended as follows:

i. In newly designated paragraph (a)(1), by revising the entries for the following commodities: barley, grain; barley, straw; wheat, grain; and wheat, straw; by adding alphabetically entries for barley, hay; corn, field, forage; corn, field, stover; corn, pop stover; cottonseed; cottonseed, meal; crop Group 17 (grass, forage, fodder and hay); grass, forage; grass, hay; oats, forage; oats, hay; wheat, forage; and wheat, hay; and by removing the entries for asparagus; grasses, pasture; and grasses, rangeland.

ii. In newly designated paragraph (a)(2) by removing the entries for soybeans; soybeans, forage; and soybeans, hay; and by adding an entry in alphabetical order for asparagus.

iii. By revising newly designated paragraph (a)(3).

The added and revised text reads as follows:

§ 180.227 Dicamba; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Barley, grain	6.0
Barley, hay	2.0
Barley, straw	15.0
* * *	* * *
Corn, field, forage	3.0
Corn, field, stover	3.0
* * *	* * *
Corn, pop, stover	3.0
Cottonseed	3.0
Cottonseed, meal	5.0
Crop Group 17 (grass, forage, fodder and hay).	
Grass, forage	125.0
Grass, hay	200.0
* * *	* * *
Oats, forage	80.0
* * *	* * *
Oats, hay	20.0
* * *	* * *
Wheat, forage	80.0
Wheat, grain	2.0
Wheat, hay	20.0
Wheat, straw	30.0

(2) * * *

Commodity	Parts Per million
Asparagus	4.0
* * *	* * *

(3) Tolerances are established for the combined residues of dicamba (3,6-dichloro-*o*-anisic and its metabolites 3,6-dichloro-5-hydroxy-*o*-anisic acid and 3,6-dichloro-*o*-2-hydroxy-benzoic acid in or on the raw agricultural commodities as follows:

Commodity	Parts Per million
Aspirated grain fractions	5100.0
Soybean, hulls	13.0
Soybean, seed	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99-109 Filed 1-5-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018-AF23

Export of River Otters Taken in Missouri in the 1998-1999 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This document announces final findings by the CITES Scientific and Management Authorities of the United States that approve the addition of Missouri to the list of States and Indian Nations approved for the export of river otter skins. This approval is on a multi-year basis. The Service intends to apply these findings to river otters taken in Missouri during the 1998-1999 season and subsequent seasons, subject to the same conditions applying to other States previously approved.

DATES: This rule is effective on January 6, 1999.

FOR FURTHER INFORMATION CONTACT: Scientific Authority finding: Dr. Susan Lieberman, Chief, Office of Scientific Authority; phone: 703-358-1708; fax: 703-358-2276; E-mail: r9osa@mail.fws.gov. Management Authority finding: Ms. Teiko Saito, Chief, Office of Management Authority; U.S. Fish and Wildlife Service; Mail Stop ARLSQ 700; 1849 C Street, NW; Washington, DC 20240; phone: 703-358-2095; fax: 703-358-2280.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty that regulates international trade in certain species of animals and plants. Exports of specimens (live, dead, or parts and products thereof) of animals and plants listed in Appendix II of CITES require an export permit from the country of origin. Export permits for specimens of species listed in CITES Appendix II are issued by a country's CITES Management Authority after two conditions are met: first, the country's CITES Scientific Authority must determine that the exports will not be detrimental to the survival of the species. This is known as a "non-detriment finding". Second, the CITES Management Authority must determine that the specimens were not obtained in violation of laws for their protection. Live animals or plants require additional findings. For exports from the United States, the U.S. Fish and

Wildlife Service's Office of Management Authority and Office of Scientific Authority make these findings.

On January 5, 1984 (49 FR 590), we published a rule granting approval for the export of pelts of North American river otters (*Lontra canadensis*) and certain other CITES-listed Appendix-II species of furbearing mammals from specified States and Indian Nations, Tribes, and Reservations (hereafter referred to as Indian Nations). That rule covered the 1983–1984 season as well as subsequent seasons. In succeeding years, we have approved the export of pelts of one or more species of furbearing mammals listed in CITES Appendix II from other States and Indian Nations, through the administrative or rule-making processes. These approvals were and continue to be subject to certain population monitoring and export requirements. The purposes of this final rule are to: (1) Announce final findings by the Scientific and Management Authorities of the United States for the export of river otter pelts (*Lontra canadensis*) taken in the State of Missouri; and (2) to add Missouri to the list of States and Indian Nations approved for the export of river otter skins. We adopt these findings for the export of the pelts of river otters taken in the State of Missouri during the 1998–1999 and subsequent seasons, subject to the conditions applying to other approved States and Indian Nations.

CITES regulates the import, export, re-export, and introduction from the sea of animal and plant species listed in the three CITES Appendices for the purpose of controlling trade in those species. According to CITES (and the Endangered Species Act, which implements CITES in the United States):

(1) Appendix I includes species threatened with extinction that are or may be affected by trade.

(2) Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless their trade is strictly controlled. Appendix II also includes species that must be subject to regulation in order that trade in other currently or potentially threatened species (those in Appendix I or II) may be brought under effective control (e.g., because of difficulty in distinguishing specimens of threatened species from those of other non-threatened species).

(3) Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Party countries to control trade.

CITES Appendix II includes the American river otter pursuant to CITES Article II, paragraph 2(b). You may obtain a copy of the CITES Treaty from the Office of Scientific Authority at the above address or from the Service's web page at <http://www.fws.gov>. CITES Article II, paragraph 2 states: "Appendix II shall include: (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control." In the January 5, 1984, **Federal Register** (49 FR 590), we announced the results of a review at the fourth meeting of the CITES Conference of the Parties (COP4, held in 1983 in Botswana) regarding U.S. species of furbearing mammals, including the river otter. Specifically, it was determined that the river otter is included in Appendix II of CITES because of the similarity in appearance of its pelts (and of products manufactured from those pelts) to other species listed in Appendix I or II. The Service determined at that time that the American river otter did not qualify for CITES Appendix II based on its own conservation status, but rather due to its similarity to other listed species. The January 5, 1985, Notice in the **Federal Register** described how our Office of Scientific Authority planned to monitor, on an annual basis, the population and trade status of the native furbearer species listed pursuant to CITES Article II.2(b). We stated then that we could institute restrictive export controls for a given species, for one or more States or Indian Nations, if export levels appeared to be contributing to long-term population declines. In that document we also described how our Office of Management Authority would require States and Indian Nations to assure the legal acquisition of specimens entering international trade, as evidenced by marking with approved, serially unique tags.

This is the second **Federal Register** document published in 1998 concerning the Service's findings on export of river otters, *Lontra* (formerly *Lutra*) *canadensis*, taken in Missouri. The first document (63 FR 52226; September 30, 1998) announced the proposed findings on the export of river otters taken in Missouri in the 1998–99 season and subsequent seasons and solicited public comments.

The purpose of this rule is to add Missouri to the list of States and Indian Nations for which the export of river otter is approved (50 CFR 23.53). The Service will apply these findings to harvests in Missouri during the 1998–99 and subsequent seasons, subject to the same conditions applying to other approved entities.

Comments and Information Received

Twenty-two comments were received in response to the September 30, 1998, **Federal Register** (63 FR 52226) proposed rule on the export of river otters taken in the State of Missouri. Comments were received from State wildlife agencies, animal welfare and animal protection organizations, scientists and other private citizens. About the same number of comments reflected support for the proposed rule as those comments that opposed approval of the export of Missouri otters.

All State wildlife agencies that submitted comments (Montana, Illinois, Indiana, Wisconsin, and Minnesota) supported the proposed rule. Several of these States, as well as the National Trappers Association, claimed that Missouri's population estimates used sound biological methods and indicated that the otter population could sustain a regular harvest. Those States that used the population model as well as the pelt tagging system adopted by Missouri said that the model and system had served them well.

All of the animal welfare organizations that submitted comments, as well as several private individuals, opposed the proposed rule. Several groups, including the Animal Protection Institute and The Humane Society of the United States, claimed that the current population estimates of Missouri otters were inadequate. The Animal Legal Defense Fund and the Rocky Mountain River Otter Protection Coalition are among those that conclude that there are no reliable census methods for otters. We acknowledge that the census methods for otters and other furbearers are not free of imperfections; however, several of the standard methods were used and the growth trend of the Missouri otter population is clear.

Richard Ostfeld, a mammalogist at the Institute of Ecosystem Studies whose work was also cited in other letters, commented that the computer simulation built by the Missouri Department of Conservation was overly simplistic in at least two ways: there was no density dependence and no consideration of population subdivision. While these could be important factors at a later time, in a

recently reintroduced and expanding population it is our opinion that these are not critical omissions in the population model, though we concur that these parameters could improve the model if and when the population stabilizes. Several respondents pointed out the discrepancy between the projected otter population and the revised number based on the actual harvest in the years that trapping has been conducted. Both private individuals and groups including The Fund for Animals and the International Otter Survival Fund contend that the survival rates used to project otter populations are inaccurate, and that environmental factors such as river pollution and deforestation could further decrease otter survival.

The survival rates given are based on methods supported in the scientific literature. While environmental factors may have a greater effect on otter survival at some time in the future, the empirical evidence suggests that both habitat and prey base have been adequate to support the rapid increase of the reintroduced population. We agree that there are other factors influencing otter mortality, but do not find evidence that they presently pose a threat that could deplete the otter population to the point that export would be detrimental. Many of those that opposed the otter export by Missouri noted that there was no limit to the number of individuals that could be taken but only a limit on the length of the trapping season. The State has argued convincingly that if they were to limit the number of individuals trapped rather than the number of trapping days, otters that are taken in traps set for other furbearers would be given to other trappers or not reported.

Several individuals and groups stated that the trapping of otters solely for their pelts is inhumane, and the practice is opposed by the majority of Missouri residents. Given that the river otter is listed as an Appendix II.2.(b) species, it is the role of the Service to assess whether the proposed plan poses a threat to otter species worldwide or river otter populations in North America, but not the fate of individual animals. The types of traps that are used, while also an important issue, is not germane to the decision that the Service is required to make. Some of the comments reflected the primary concern of an Appendix II.2.(b) status of species: That the trade in Missouri river otters would be detrimental to the same species in other States where they were protected, or other otter species that were listed as CITES Appendix I. We feel that the tagging system developed

for otters and other exported CITES-listed furbearer species limits this risk (See Scientific Authority Findings), and there are also forensic methods for determining the species-identity of otter pelts.

The Office of Scientific Authority also sought the independent assessments of two expert scientists with Department of Interior, U.S. Geological Survey Biological Resources Division (BRD). These scientists noted that the population modeling approach used by the Missouri Department of Conservation (MDC) was a standard one when the population is treated as a single interbreeding group. In this regard they pointed out that all of the Missouri otters have been reintroduced from founder stocks that originated in Louisiana and other localities outside of Missouri. They concurred that the high reproductive rate based on corpora lutea found upon necropsy is supported in the scientific literature, and other measures used were standard for carnivore population biology. Both scientists concluded that the population estimation methods were sound. The population model did not consider density dependence or the development of local populations. The evaluators indicated that these assumptions were allowable in a recently introduced, rapidly growing otter population. One scientist noted that the model has already undergone modification, and the other suggested that such factors might be added to the model if the Missouri population reached equilibrium in the future. While acknowledging that all populations models and estimates have limitations, both biologists indicated that the Missouri Department of Conservation made a thorough analysis of the effects of otter trapping. We concur with these BRD scientists that both the census and modeling efforts show that river otters in Missouri represent an expanding population that can sustain harvesting without a serious risk of rapid decline.

Scientific Authority Findings

Article IV (paragraph 2) of CITES requires that, before the Management Authority issues a permit to export a specimen of a species included in Appendix II, the Scientific Authority must advise "that such export will not be detrimental to the survival of that species." Our Office of Scientific Authority must develop such advice (known as a "non-detriment finding") for the export of Appendix-II animals, in accordance with section 8A(c)(2) of the Endangered Species Act of 1973, as amended. For native U.S. species such as the river otter, the Act requires the

Secretary of the Interior to base export determinations and advice "upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

The wildlife agencies of individual States and Indian Nations manage the river otter. We identified in the January 5, 1984, **Federal Register**, and listed in 50 CFR 23.53 States and Indian Nations approved for the export of river otters. We granted administrative approval to the State of Tennessee for the 1994-1995 season and multi-year approval through a rule-making for 1995-1996 and subsequent seasons (61 FR 2454, January 26, 1996). We granted administrative approval to the State of Missouri for the 1996-1997 and 1997-1998 seasons. Each State or Indian Nation approved by the Service for the export of river otters has a program to regulate the trapping and take of the species.

The Service's Office of Scientific Authority therefore has two primary obligations regarding exports of river otters taken in the United States. We must find that any U.S. exports of river otter pelts are not detrimental to the population status in the wild of any other similar furbearer species listed in Appendix I or II. We also must determine that the status of river otters in the United States (based on information provided by the States and based on our own monitoring of trade) does not decline to the point where the species itself could qualify for inclusion in CITES Appendix II in its own right, pursuant to Article II.2(a). The CITES Parties adopted new, improved criteria for inclusion of species in Appendix II, pursuant to Article II.2(a), at the ninth meeting of the Conference of the Parties, held in the United States in November 1994 (Resolution Conf. 9.24).

Since listing of the river otter in Appendix II was due to its similarity of appearance to other listed species in need of trade controls, an important component of our non-detriment finding is consideration of the impact of river otter trade on the status of these other species. The Office of Scientific Authority has determined that the CITES requirement of issuing export permits naming the species being traded, coupled with the marking of pelts with tags bearing the name of the species, State of origin, year of take, and a unique serial number, is sufficient to eliminate potential problems of confusion with, and therefore risk to, other listed species. The requirement to

tag all river otter pelts with unique, tamper-proof tags is a U.S. requirement that goes beyond any CITES requirement (see Management Authority Findings, below, for tag specifications).

In addition to considering the effect of trade on species or populations other than those being exported from the United States, we will regularly examine information on river otters in the State of Missouri to determine if there is a population decline that might warrant more restrictive export controls. The Service will continue to work closely with the State of Missouri, which has primary management responsibility for its river otters. The monitoring and assessment for Missouri will follow the same approach used for other States and Indian Nations. As part of this monitoring, we annually request that the States and Indian Nations already approved for export of river otters certify to the Service that the best available biological information derived from professionally accepted wildlife management practices indicates that take of river otters during the forthcoming season will not be detrimental to the survival of the species. The Service plans to work with Missouri and other States and Indian Nations to develop consistent methods of assessing river otter populations.

Whenever available information from the States or other sources indicates a possible problem in a particular State, the Scientific Authority will conduct a comprehensive review of accumulated information to determine whether conclusions about the treatment of these species as listed for similarity of appearance (Article II.2.b) continue to be true for the particular State.

Though at one time found commonly in the State of Missouri, river otters were nearly extirpated from the State between 1860 and 1910. An estimated 70 animals survived in the southeastern part of the State by the mid-1930s. Because most significant habitat changes occurred more recently, this early population decline is believed to be a consequence of unregulated trapping and other killing of the species. Legal protection for the species occurred in 1936, but the species did not begin to recover until the State initiated a restoration and reintroduction program. The MDC initiated a river otter reintroduction program in 1982, whereby it released 845 river otters at 43 locations in the State. The MDC considers that restoration program to have been completed in 1992; during those 10 years it studied the status and distribution of river otters in the State. Based on information provided by the State of Missouri and other States, the

Service believes that the status of river otters in the Midwest of the United States has improved, and populations in virtually all States where the species is native are either stable or increasing. We published a discussion of this release program and our previous findings on river otters in Missouri in the **Federal Register** on April 2, 1996 (61 FR 14543), and October 7, 1996 (61 FR 52403).

According to the MDC, Missouri has in place several different methods to monitor and assess the status of river otters in the State: (1) A three-year study began in 1996, in cooperation with the University of Missouri, to develop population monitoring methods, including a stream survey for otter sign, a capture-per-unit-effort index based on trappers' records, and a refined population model based on age-specific reproduction data and age-distribution data from a sample of Missouri river otters; (2) the State uses aerial surveys of winter tracks to monitor populations, along with Archer's Index to Furbearer Populations, as an index of population trends; and (3) the State has in place a mandatory pelt registration and tagging program during annual trapping seasons, in order to provide a harvest accounting system.

In 1995, the Missouri Conservation Commission approved an otter trapping season for the 1996-1997 season. After further deliberation we approved export authorization for pelts of Missouri river otters taken during the 1996-1997 season. Subsequently, in July 1997, the MDC requested export authority for the 1997-1998 season and subsequent trapping seasons. We granted export authorization for the 1997-1998 season only, based on our evaluation of information provided by Missouri. On June 22, 1998, our Office of Scientific Authority received a detailed request from the State of Missouri for approval of exports of river otter pelts for 1998-1999 and subsequent seasons. The June 22, 1998, request from the State of Missouri Department of Conservation contained detailed analyses of data from the 1997-1998 season as well as previous seasons. This information is available on request from the Office of Scientific Authority.

According to the State of Missouri, trappers took 1,146 otters in the 1997-1998 trapping season. The State believes that trapping pressure and the number of otters taken per licensed trapper (an index of population status) remained basically the same from previous years. Of those otters taken, the State tagged 1,128 with CITES tags provided by the Service. The State also analyzed and necropsied 260 river otters taken in the State as an important component of its

assessment of river otter populations. The submission of June 22, 1998, from the State elaborates on these assessments. Using a number of indices and measurements, the State of Missouri has determined that reproductive rates are higher than previously predicted for river otters and that a healthy proportion of the river otter population in the State consists of juveniles and yearlings (both males and females), which reinforces the State's assertion that the population is increasing. The State also used population demographic data from otter necropsies and survival data from radio-telemetry studies to model otter population growth. The MDC has concluded that there is a pre-season estimated population of 6,736 river otters in the State of Missouri, and that this population continues to increase.

Ongoing river otter population surveys in Missouri have taken place both prior to and after the trapping seasons. Preliminary results indicate a stable or increasing population. The State also calculates indices of capture-per-unit-effort based on trapper diaries, and has provided preliminary data for the 1996-1997 and the 1997-1998 seasons. The MDC has also used Archer's Index to Furbearer Populations to detect changes in furbearer populations; those results are consistent with an increase in river otter populations.

The State of Missouri has presented information that supports a conclusion that river otter populations are widely distributed and secure in Missouri. The Service notes that the State of Missouri has primary responsibility for managing its river otter population including its decision to authorize trapping. The State of Missouri is committed to continue its surveys, population monitoring, and population modeling. Based on: (1) The biological and other information provided by the Missouri Department of Conservation; (2) the existence of a management infrastructure in the State for managing and enforcing trapping regulations; (3) independent scientific review of the Missouri Department of Conservation otter population model and assessment; (4) an evaluation of the disparate comments received on the proposed rule; and (5) the determination that permitting and tagging requirements will minimize the risk that exporters will misrepresent other similar-appearing CITES-listed species in trade as river otters, the Service's Office of Scientific Authority has advised the Office of Management Authority that exports of river otter pelts of animals legally taken in the State of Missouri

will not be detrimental to the population of other similar furbearer species listed in CITES Appendix I or II. Furthermore, the Office of Scientific Authority also believes that river otters in the United States do not qualify for inclusion in CITES Appendix II pursuant to Article II.2(a). Therefore, the Service hereby adds the State of Missouri to the list of States and Indian Nations approved for export of river otters.

Management Authority Findings

Exports of Appendix-II species are allowed under CITES only if the Management Authority is satisfied that the specimens were not obtained in violation of laws for their protection. Therefore, to allow any export, we must be satisfied that applicants wishing to export river otter pelts, hides, or products obtained those items in compliance with State, Indian, and Federal law. State or Tribal tagging programs provide evidence of legal take for the following native U.S. species: Alaskan gray wolf, Alaska brown or grizzly bear, American alligator, bobcat, lynx, and river otter. The States and Tribes have responsibility for management of these species, and we assure ourselves that pelts are taken in accordance with State and Tribal law through a tagging program. The Service annually contracts for the manufacture and delivery of specific CITES animal-hide tags for States and Indian Nations that qualify. We note that, although the United States instituted this tagging requirement independently of CITES, the CITES Parties adopted it for all crocodylian species. The Office of Management Authority is responsible for ordering the tags for all approved States and Indian Nations and provides them at no charge. We have adopted the following export requirements for the 1983–1984 and subsequent seasons:

(1) Current State or Indian Nation, Tribe, or Reservation hunting, trapping, and tagging regulations and sample tags must be on file with our Office of Management Authority;

(2) The tags must be durable and permanently locking, and must show the U.S.-CITES logo, the name of the State or Indian Nation, Tribe, or Reservation of origin, the year of take, the species, and a unique serial number;

(3) Trappers or other persons taking otters must attach tags to all pelts taken within a minimum time after take, as specified by the State or Indian regulation, and must do so as soon as possible to minimize movement of untagged pelts (even pelts not intended for export must be tagged);

(4) Trappers or other persons taking otters must attach tags permanently as authorized and prescribed by the State or Indian regulation;

(5) Takers/trappers/dealers who are licensed or registered by the State or Indian Nation must account for all tags received and must return unused tags to the State or Indian Nation within a specified time after the season closes; and

(6) We will allow the export of fully manufactured fur or hide products from the United State only when the CITES export tags removed from the hides prior to manufacture are surrendered to us prior to export.

Export Approval

This document represents the final administrative step in procedures established to authorize exports of river otters and other designated furbearing mammals from Service-approved States and Indian Nations in accordance with CITES. Accordingly, the export of Missouri river otters harvested during the 1998–1999 and subsequent seasons is now approved on the grounds that such exports meet the criteria for both the Scientific Authority and Management Authority under CITES.

The Department has determined within the meaning of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act, that there is good cause to make these findings and rule effective immediately. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that has already begun in Missouri. Because Scientific and Management Authority criteria have been satisfied, it follows that making this rule effective immediately will not adversely affect the species involved. This approval is subject to revision prior to any subsequent taking season in any State or Indian Nation, if a review of information reveals that Management Authority or Scientific Authority findings in favor of export should be changed.

Effects of the Rule and Required Determinations

As a preface to this portion of the notice, we note that the issuance of Management Authority and Scientific Authority findings under CITES does not constitute rulemaking under the Administrative Procedure Act (APA). Nevertheless, we have used the rulemaking procedure to enhance involvement by the States and the public.

The Department of the Interior previously determined (48 FR 37494,

August 18, 1983) that the export of river otters from various States and Indian Nations, taken in the 1983–1984 and subsequent seasons, is not a major Federal action that would significantly affect the quality of the human environment under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347). The Fish and Wildlife Service has determined that a finding of no significant impact is appropriate for this action under regulations implementing NEPA.

This rule was not subject to Office of Management and Budget review under Executive Order 12866 and would not pose significant economic effects to a substantial number of small entities as outlined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because the existing rule treats exports on a State-by-State and Indian Nation-by-Indian Nation basis and approves export in accordance with an already existing State or Indian Nation management program, the rule would have little effect on small entities in and of itself. This final rule will allow continued international trade in river otters from the United States in accordance with CITES and does not contain any Federalism impacts as described in Executive Order 12612. This action is not expected to have significant taking implications for U.S. citizens, as per Executive Order 12630.

Information Collection Requirements

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no new information collection requirements for which Office of Management and Budget (OMB) approval is required. Persons exporting river otter skins from the United States may obtain permits which are already authorized under 50 CFR part 23 as approved by OMB and assigned clearance number 1018–0093. No new information collection or permit requirements are contained in this regulation. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not significantly or uniquely affect small governments, nor will it produce a Federal mandate of \$100 million or greater in any year (i.e., it is not a significant regulatory action under the Unfunded Mandates Reform Act).

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. Individual tribal members are subject to the same regulatory requirements as other individuals who export American river otters.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation.

This final rule is issued under the authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service amends Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

2. In Subpart F-Export of Certain Species, revise § 23.53 to read as follows:

§ 23.53 River otter (*Lontra canadensis*)

States for which we permit the export of the indicated season's take under § 23.15 of this part:

(a) States and Indian Nations, and Seasons Approved for Export of River Otter From the United States:

	1977-78 ¹	1978-79 ²	1979-80 ³	1980-81	1981-82	1982-83	1983-84 and future	1995-96 and future	1996-98 and future	1998-99 and future
Alabama	Q	+	+	+	+	+	+	+	+	+
Alaska	+	+	+	+	+	+	+	+	+	+
Arkansas	Q	+	+	+	+	+	+	+	+	+
Connecticut	Q	+	+	+	+	+	+	+	+	+
Delaware	Q	+	+	+	+	+	+	+	+	+
Florida	Q	+	+	+	+	+	+	+	+	+
Georgia	Q	+	+	+	+	+	+	+	+	+
Louisiana	Q	+	+	+	+	+	+	+	+	+
Maine	Q	+	+	+	+	+	+	+	+	+
Maryland	Q	+	+	+	+	+	+	+	+	+
Massachusetts	Q	+	+	+	+	+	+	+	+	+
Michigan	Q	+	+	+	+	+	+	+	+	+
Minnesota	Q	+	+	+	+	+	+	+	+	+
Mississippi	Q	+	+	+	+	+	+	+	+	+
Missouri	-	-	-	-	-	-	-	-	+ ⁵	+
Montana	Q	+	+	+	+	+	+	+	+	+
New Hampshire	Q	+	+	+	+	+	+	+	+	+
New Jersey	-	-	-	-	-	+	+	+	+	+
New York	Q	+	+	+	+	+	+	+	+	+
North Carolina	Q	+	+	+	+	+	+	+	+	+
Oregon	Q	+	+	+	+	+	+	+	+	+
Penobscot Nation	-	-	-	-	-	-	+	+	+	+
Rhode Island	Q	+	-	-	-	-	-	-	-	-
South Carolina	Q	+	+	+	+	+	+	+	+	+
Tennessee	-	-	-	-	-	-	-	+ ⁴	+	+
Vermont	Q	+	+	+	+	+	+	+	+	+
Virginia	Q	+	+	+	+	+	+	+	+	+
Washington	Q	+	+	+	+	+	+	+	+	+
Wisconsin	Q	+	+	+	+	+	+	+	+	+

¹ For further information, see 42 FR 43729, Aug. 30, 1977; 43 FR 11081, Mar. 16, 1978; and 43 FR 29469, July 7, 1978.

² For further information, see 43 FR 11096, Mar. 16, 1978; 43 FR 13913, Apr. 3, 1978; 43 FR 15097, Apr. 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, Aug. 7, 1978; 43 FR 36293, Aug. 16, 1978; and 43 FR 39305, Sept. 1, 1978.

³ For further information, see 44 FR 25383, Apr. 30, 1979; 44 FR 31583, May 31, 1979; 44 FR 40842, July 12, 1979; 44 FR 52289, Sept. 7, 1979; and 44 FR 55540, Sept. 26, 1979.

⁴ Export for 1994-95 approved administratively (for Tennessee).

⁵ Export for 1996-97 and 1997-98 approved administratively (for Missouri).

Q Export approved with quota.

+ Export approved.

- Export not approved.

(b) Condition on export: Exporters must clearly identify each pelt as to species, State or Indian Nation of origin,

and season of taking by permanently attaching a serially numbered tag of a type approved and provided by the

Service and attached under conditions established by the Service. Exception to the tagging requirement: We will allow

the export of fully manufactured fur or hide products from the United States only when the CITES export tags removed from the hides prior to manufacture are surrendered to us prior to export. Such tags must be removed by cutting the tag straps on the side next to the locking socket of the tag, so that the locking socket and locking tip remain joined.

Dated: December 29, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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