

533.215 [Removed]

- 6. Remove section 533.215.

#### **PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 7. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

552.233–70 and 552.233–71 [Removed]

- 8. Remove sections 552.233–70 and 552.233–71.

[FR Doc. E8–29061 Filed 12–8–08; 8:45 am]

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### **DEPARTMENT OF THE INTERIOR**

#### **Fish and Wildlife Service**

##### **50 CFR Part 14**

[FWS–R9–LE–2008–0024; 99011–1224–0000–9B]

RIN 1018–AV31

#### **Importation, Exportation, and Transportation of Wildlife; Inspection Fees, Import/Export Licenses, and Import/Export License Exemptions**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), publish this final rule to revise subpart I—Import/Export Licenses, of title 50 of the Code of Federal Regulations, part 14 (50 CFR 14), to clarify the import/export license and fee requirements, adjust the inspection fee schedule, and update license and inspection fee exemptions. We are clarifying when an import/export license is required by persons who engage in the business of importing and exporting wildlife as well as changing the license requirement exemptions. Revised regulations will help those importing and exporting wildlife better understand when an import/export license is required and will allow us to consistently apply these requirements. We are gradually increasing inspection fees, and now publishing the changes for 2008 through 2012. We determined that these inspection fees must be adjusted every year to cover the increased cost of providing inspection services. Because we are publishing these inspection fee changes now, importers and exporters can accurately predict the costs of importing and exporting wildlife several years in advance.

**DATES:** This final rule is effective January 8, 2009.

#### **FOR FURTHER INFORMATION CONTACT:**

Kevin Garlick, Special Agent in Charge, Branch of Investigations, Office of Law Enforcement, U.S. Fish and Wildlife Service, telephone (703) 358–1949, fax (703) 358–1947.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Assistance for Import/Export Questions**

We highly recommend that you contact our wildlife inspectors about importing and exporting procedures and requirements before you import or export your wildlife. We have wildlife inspectors stationed at numerous ports throughout the country. You can find contact information for our wildlife inspectors on our Web site at: <http://www.fws.gov/le/ImpExp/inspectors.htm>. In addition, the Service has a telephone hotline that is staffed Monday through Friday, 8 a.m. through 8 p.m. Eastern time, to provide assistance for any questions you may have regarding importing and exporting wildlife, at 1–800–344–WILD.

##### **Background**

We have oversight responsibilities under statutory and regulatory authority to regulate the importation, exportation and transportation of wildlife. Consistent with this authority, we have established an inspection program to oversee the importation, exportation, and transportation of wildlife and wildlife products. In support of our program activities, we promulgated regulations contained in 50 CFR 14 to provide individuals and businesses with guidelines and procedures to follow when importing or exporting wildlife, including parts and products. These regulations explain the requirements for individuals or businesses importing or exporting wildlife for commercial purposes, or for people moving their household goods, personal items, or pets, as well as the exemptions provided for specific activities or types of wildlife. The regulations at 50 CFR 14 provide individuals and businesses with the specific ports and locations where these activities may be conducted and any fees that may be charged as a result of these activities.

##### **Final Rule**

The following parts of this preamble explain the final rule and present discussion of the substantive issues of each section that we are changing in subpart I of part 14, along with our responses to comments we received on the proposed rule. The final rule largely implements the changes we described in the proposed rule but makes some adjustments based upon public

comments. We are changing the requirements for an import/export license, how to apply for an import/export license, what inspection fees apply to importers and exporters, and what exemptions we apply to licenses and fees.

On February 25, 2008, we published a proposed rule in the **Federal Register** (73 FR 9972) revising 50 CFR 14, Subpart I. The public comment period remained open until April 25, 2008. In addition, we sent letters to organizations and associations that represent businesses that could be affected by the rulemaking. We wanted to ensure that these entities had an opportunity to review and comment on our proposed rule.

In response to this proposed rule, we received 72 comments from the public. These included comments from industry representatives importing or exporting fur, aquacultured white sturgeon, elk, deer, mother-of-pearl shell, tropical fish, corals, insects, seafood products, and other wildlife commodities, as well as comments from one foreign embassy and several trade councils, associations, and non-governmental organizations. Four of the comments were unrelated to the proposed rule and are not discussed below. We also held a public meeting on April 3, 2008, that was attended by 14 persons. Two commenters provided oral comments at the meeting. The majority of comments we received were in writing and pertained to changes in the inspection fee structure. Many comments were form letters that were identical or nearly identical in content. Many comments provided variations on the same substantive issues and ranged from strongly supportive to strongly critical.

##### **Our Changes to Import/Export License Requirements (§ 14.91—When do I need an import/export license?)**

We are removing the definition of “engage in business as an importer or exporter of wildlife,” because the elements of the definition are already expressed in the current definition of “commercial,” and the broader definition of commercial more accurately reflects what we consider as “engaging in business.”

We are removing the existing section on certain persons required to be licensed, § 14.91(c), and replacing it with a table that provides examples of when we consider persons to be engaging in business as an importer or exporter of wildlife. We are limiting who should be licensed to those persons directly involved with importing and exporting wildlife. Therefore, we are

eliminating requirements for persons who are indirectly involved with a shipment either before or after our clearance of the shipment. Based upon comments, we added one example related to hobbyists and commercial activities and one example regarding hunting trophies to the table. We also made changes to the language in other examples to further clarify when we require an import/export license.

#### Comments on Our Proposed Changes to § 14.91

Three commenters responded to the changes in this section. One commenter representing 11 nongovernmental organizations agreed with our use of the definition of commercial to replace the phrase “engage in business.”

We received one comment stating we should not treat imports of hunting trophies as commercial shipments when they are consigned in the hunter’s name in care of a taxidermist or tannery. We agree with the commenter and have added an example to reflect this. Imports of personal hunting trophies for a hunter that are shipped in care of a taxidermist or tannery are not considered commercial shipments. We recognize that many hunting trophies imported by a hunter are sent directly to a taxidermist for preparation after import clearance. The commercial work that is conducted domestically after clearance does not cause a personal trophy import to be considered commercial.

One commenter representing 11 nongovernmental organizations suggested several changes to the table in § 14.91(c). One comment suggested we change § 14.91(c)(4) to include laboratory suppliers. We agree and have updated the table accordingly. Another suggestion was that we change § 14.91(c)(5) to include the phrase “of personally owned live wildlife (pets).” We agree with the concept and have updated the table accordingly. A final suggestion was that we change § 14.91(c)(6) regarding hobbyists to include the phrase “individual owner of personal and household effects” and limit this example to previously owned specimens. We decline to adopt this suggestion since we do not believe the narrowing of this example to personal or household effects that are previously owned specimens would be appropriate. All noncommercial imports and exports for personal use are exempt from the import/export license whether or not they are shipped as a personal or household effect or are previously owned. This example remains unchanged from the proposed rule.

#### Our Changes to Exemptions to Import/Export License Requirements (§ 14.92—What are the exemptions to the import/export license requirements?)

We are removing two exemptions from our import/export license requirements for businesses that import or export products from several mammal species that have been bred and born in captivity and for circuses that import or export wildlife.

Until the effective date of this final rule, our regulations have allowed businesses that exclusively import or export chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity, and products of these animals, to conduct business without obtaining an import/export license. If a particular business chooses to import or export wild specimens of these species or species other than those listed above, they must obtain an import/export license. Upon the effective date of this final rule, we are removing the import/export license exemption in § 14.92 for businesses that exclusively import or export chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity or products of these animals.

Our current import/export license regulations also exempt businesses that import or export products from the rabbit and karakul. The karakul, which is a variety of the domestic sheep, and the rabbit are defined as domesticated species and, therefore, are already exempted from all Service import or export requirements.

Our import/export data show that the majority of businesses that import or export mammals or products made from mammals do not deal exclusively in chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity. Rather, most businesses deal in a mixture of these species and other species that do not qualify for the import/export license exemption, or the trade is in wild-caught specimens. Only approximately 1.5 percent of the shipments declared to us in fiscal year 2005 consisted exclusively of captive-bred specimens of the above-listed species. Although many businesses have not taken advantage of the exemption, any exempted shipments still require our inspection and clearance.

All other wildlife types that are identified as being exempt from the import/export license, such as certain shellfish and nonliving fishery products, are also wildlife that the Endangered Species Act (16 U.S.C. 1531 *et seq.*) or these regulations have exempted from inspection and

clearance. No statutory or regulatory inspection or clearance exemptions are provided for captive-bred mammals or their products. This exemption has had the unfortunate consequence of creating a monetary incentive for the global trade community to falsely declare wild mammal specimens as captive-bred upon import into the United States. In addition, due to shipping and other business practices, importers of foreign-sourced mammal products imported into the United States are more likely to declare the products as captive-bred for purposes of claiming the exemption than exporters of U.S.-sourced mammal products.

Because these specific captive-bred mammal shipments are exempt from the import/export license requirements, the corresponding importers or exporters are not required to maintain records of their imports or exports or any subsequent dispositions and do not have to provide the Service with access to these records or inventories of wildlife upon reasonable notice. The lack of recordkeeping requirements and access to these records hinders our ability to investigate instances of false declarations. These corresponding importers and exporters are also exempt from paying inspection fees and filing reports with the Service upon request. Because of all the problems that have resulted from this exemption, we are removing the exemption to the import/export license requirements for persons engaging in the business of importing or exporting shipments containing only chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity or their products.

We also have determined that circuses will no longer qualify for the exemption from our import/export license requirements. Our current import/export regulations allow certain persons and businesses, including circuses, to import or export wildlife without obtaining an import/export license. However, with the exception of circuses, it is apparent that these exempt businesses or organizations, which include common carriers, custom house brokers, public museums, scientific or educational institutions, and government agencies, are not engaging in business as importers or exporters of wildlife. While circuses typically do not import or export wildlife for resale, they do import or export wildlife to stimulate additional business through ticket sales or other promotions.

We clarify that importers and exporters of shellfish and nonliving fishery products are exempt from the import/export license requirement. We

had proposed to change the language in this section to "nonliving fish products," which reflects the historical working implementation by the Service of this exemption. The Service defines shellfish in 50 CFR 10.12 as "an aquatic vertebrate with a shell including but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any other part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product." The Service has also long defined fishery products as nonliving fish products. However, based upon comments received, we retained the original wording of "fishery product" but accepted the change of "nonliving." This change makes it clear that the Service considers only dead fishery products to be granted the exemption. Nothing in this wording change affects how the Service implements this exemption.

#### **Comments on Our Proposed Changes to § 14.92**

We received 12 comments from commenters related to our proposal to remove the exemption to the import/export license requirements for persons engaging in the business of importing or exporting shipments containing only chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity or their products. Nine commenters representing U.S. retail businesses, a U.S. fur industry coalition, a Canadian fur industry coalition, and the government of Canada strongly opposed the elimination of the import/export license exemption because of "increased costs for shipping furs and fur products between the United States and Canada."

Several commenters opposed to the elimination stated that the elimination would create an inequity of treatment between the United States and Canada because Canada does not charge for inspections of wildlife. Other commenters argued that elimination of the exemption undermines the North American Free Trade Agreement (NAFTA) and one commenter argued the elimination is contrary to U.S. obligations under the General Agreement on Tariffs and Trade (GATT). Another commenter stated the elimination of the exemption represented a discriminatory action against small retailers and manufacturers. Two commenters stated that if cost recovery was our objective, then we should remove all exemptions.

Three commenters representing 11 nongovernmental organizations strongly

supported the elimination of the exemption that in their view had created incentives to falsely declare wild animals as captive-bred. One commenter stated that the exemption hampered the Service's ability to track the trade and any possible impacts on wildlife populations, while another commenter stated that removal would weaken the ability of the trade to falsely declare wild-source products as from captive-bred animals. One commenter stated that in the interest of fairness the exemptions should be revoked and that it was "unclear why for-profit endeavors" had ever been exempted since "these businesses should share in the funding of the inspection program in tandem with other commercial traders."

As previously stated, most businesses deal in a mixture of these species and other fur-bearing species that do not qualify for the import/export license exemption, or the trade is in wild-caught specimens. For those shipments that do qualify, we still must provide inspection and clearance services to fulfill our legal mandates. In addition, as noted previously, retention of this exemption would allow some members of the trade to continue to falsely declare the source of their specimens in order to receive a fee exemption and our inability to review import records would not allow us to detect these false practices. This exemption has had the unintended consequences of unfairly granting a fee exemption primarily to foreign-origin goods. Finally, as discussed throughout this rule, we do not find it fair that nonexempt businesses pay more than their share of the costs in order for us to recover the costs not paid by exempt businesses. See the preamble discussion associated with inspection fees (Our Changes to Inspection Fees; §14.94—What fees apply to me?), for a further discussion on fees related to this exemption.

We have determined that removing this exemption is wholly consistent with the United States' obligations under NAFTA and GATT because the exemption provided an advantage to businesses that deal exclusively in chinchilla, fisher, fox, marten, mink, muskrat, and nutria that have been bred and born in captivity. Besides, GATT clearly permits the recovery of costs for services rendered to importers and exporters. In addition, neither GATT nor NAFTA overrules our obligations to regulate the international wildlife trade under the Convention on International Trade in Endangered Species (CITES) or stricter U.S. conservation laws, provided we do so in a non-discriminatory manner. Those currently not receiving the exemption pay a

disproportionate share of the costs of the inspection program. The final rule establishes a level playing field.

Although some countries do not currently charge for import/export related services, inspection fees for these types of services are being adopted by more and more countries. In the United States, commercial importers and exporters of wildlife must have permission to engage in the business of importing or exporting wildlife, file required declarations, and receive clearance from the Service. These are not activities that the general taxpayer engages in and thus the recipient of these services should be responsible for paying for the costs of these services. We are not making any changes to the rule in response to these comments.

We received four comments in response to our proposal to eliminate the import/export license exemption for circuses. As previously mentioned, two commenters stated that if cost recovery was our objective, then we should remove all exemptions. One commenter strongly concurred that circuses should no longer qualify for exemption since the "circus trade results in high profits for this industry." Another commenter strongly supported the removal of the exemption since commercial entertainment such as circuses, magic acts, and animal acts are for-profit businesses. We agree that circuses are importing and exporting for commercial purposes. We are therefore removing the exemption from the import/export license requirements. We consider shipments of wildlife imported or exported as part of commercial entertainment, such as magic acts or animal shows, commercial as well and are not exempting them from import/export license requirements.

Seven commenters representing the seafood industry and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA-Fisheries) provided comments related to the proposed wording in § 14.92 regarding the exemption from the import/export license requirements for certain shellfish and nonliving fish products. The comments addressed shipments of squid, octopus, and cuttlefish. All of the comments from industry opposed the change in wording because of what they perceived to be a narrowing of the exemption and a creation of new requirements for squid, octopus, and cuttlefish. As stated above, the change in wording does not affect the way the Service currently implements the exemption.

One commenter stated that the legislative history of the Endangered

Species Act (ESA; 16 U.S.C. 1531 *et seq.*) suggests that Congress intended to exempt squid from licensing requirements. We disagree. Nothing in the legislative history of the ESA provides guidance on what species are included in the statutory exemption. Indeed the same commenter also indicates that the initial House bill, the Senate bill, and the Conference report all failed to provide any explanations as to what was intended to be covered by the exemption. Several commenters referred to other legislation, such as the Saltonstall-Kennedy Act and the Magnuson-Stevens Act, which include squid as a fishery product. We note, however, that the referenced pieces of legislation have overly broad definitions of both "fish" and "fishery products" that in many instances include all aquatic plants and animals. Nothing in these references requires us to apply these definitions to wildlife shipments regulated under the ESA.

NOAA-Fisheries, our partner agency in oversight of these species, commented that both the Magnuson-Stevens Act provisions and the regulations of the agency's Northeast Region lack a clear definition of shellfish. The NOAA-Fisheries commenter referenced a definition of shellfish from the United Nations Food and Agriculture Organization that states "shellfish includes both mollusks, such as clams, and crustaceans, such as lobsters," as well as the Service's definition of shellfish, and stated that their understanding is that organisms in the class Cephalopoda are shellfish. While we would agree that squid, octopus, and cuttlefish are mollusks, we do not consider them to be an aquatic invertebrate with a shell as is required under the definition and is shown through examples in the definitions. NOAA-Fisheries requested that we provide clarification in the rule on the definition of shellfish and requested that the Service change the language in the rule from "Shellfish and fishery products" to "Shellfish, as defined by 50 CFR 10.12, and nonliving fishery products." Although nothing in this wording changes our implementation of the exemption, we accepted these comments and changed the language accordingly.

Several comments we received from industry questioned our authority to regulate shipments of squid, octopus, cuttlefish, and other seafood. The ESA provides the Service with broad authority to regulate the import and export of fish and wildlife through licensing of importers and exporters, inspecting shipments, and charging and retaining reasonable fees for processing

applications and performing inspections. This authority is not limited to endangered or threatened species or those protected under CITES.

Several of these commenters referenced the Reorganization Plan 4 of 1970 and a memorandum of understanding between NOAA-Fisheries and the Service transferring certain responsibilities to NOAA-Fisheries. Nothing in the reorganization plan transferred the authority for imports and exports of wildlife to NMFS. In fact, regulations at 50 CFR 222.205 state that importers or exporters of fish or wildlife subject to NMFS jurisdiction should refer to our regulations at 50 CFR 14 for importing and exporting requirements. We also note that NOAA-Fisheries submitted comments on this exemption and not only did not question our authority but indicated it looked "forward to working with FWS in advancing environmentally sound import/export regulations."

Several commenters complained about the Service's selective enforcement of this exemption. We are aware of the inconsistencies in enforcement at our ports and are working nationwide to implement the requirements consistently. We note that the Service currently does not have direct access to manifest or entry information provided to U.S. Customs and Border Protection (CBP) and relies heavily upon the import/export community to comply with our regulatory requirements. Working with CBP and our partners in the U.S. Food and Drug Administration, we hope to gain greater compliance from the trade and consistent application of the requirements.

Several commenters stated that the removal of the shellfish exemption would create a financial burden and that we had provided an inaccurate analysis of the costs of adding this new requirement. We are not removing the exemption or adding requirements associated with shellfish and nonliving fishery products. As we stated earlier, nothing about the language change in this rule affects the way we currently implement the exemption.

#### **Our Changes to Import/Export License Application Requirements (§ 14.93—How do I apply for an import/export license?)**

We are removing the specific additional information language from the current §14.93(b) because we updated the import/export license application form, FWS Form 3-200-3, to include this additional specific information. We are also reorganizing the license conditions section for clarity

and to add the requirement that importers and exporters are responsible for providing current contact information, including an address, that the Service will use for official notifications.

For clarity, we are reorganizing the section that outlines issuance, denial, suspension, revocation, or renewal of an import/export license. We are also adding two new factors that are grounds for suspension, revocation, denial, or renewal of an import/export license. Although these factors are already generally covered by the regulations in part 13 of subchapter B of chapter I of title 50 of the Code of Federal Regulations, we wish to highlight these two factors for wildlife importers and exporters. We are going to consider repeated failure to provide the required prior notification for certain shipments as possible grounds for action against an existing import/export license holder or during consideration of a new or renewal import/export license application. Failure by importers or exporters to provide this required notification risks the health or condition of live and perishable shipments because of clearance delays and requires us to accommodate last-minute inspection schedule changes that directly impact the schedules of other importers or exporters.

We are also adding the repeated import or export of certain types of wildlife without following the requirements in this subpart as grounds for action against an existing import/export license holder or during consideration of a new or renewal import/export license application. This repeated failure to follow requirements for certain wildlife imports or exports may result in a restriction of the license to disallow engaging in business with those particular types of wildlife while still allowing the importer or exporter to continue to engage in business with other wildlife.

#### **Comments on Our Proposed Changes to § 14.93**

We received one comment from a license holder related to our addition of repeated failure to provide prior notification as a criterion for taking action against an import/export license holder. The commenter stated we should clearly indicate that denial should be made only where the violations can be considered egregious. The commenter requested that we include examples of what those egregious violations might be.

We consider the repeated failure to provide prior notification to be a serious violation. As we stated in the proposed

rule, failure by importers or exporters to provide this required notification risks the health or condition of live and perishable shipments. It causes clearance delays and requires us to accommodate last-minute inspection schedule changes that directly impact the schedules of other importers or exporters. Importers and exporters wishing to engage in the business of importing or exporting wildlife must receive the Service's permission in order to do so. We believe that continual failure to abide by Service import/export requirements should subject a license holder to the potential denial of an import/export license. The general permit conditions in 50 CFR part 13 do not limit the use of this denial authority to only egregious violations, and therefore we have not changed the rule based upon this comment.

We received two comments suggesting that the Service should define "repeated" in the context of revoking or not reissuing import/export licenses, with one commenter suggesting we replace "repeatedly" with "more than once." We decline to accept these comments. We feel that the terms "repeated" and "repeatedly" give sufficient guidance in the context of revoking or not reissuing import/export licenses, and that in some circumstances, more than one violation may not warrant revocation or not reissuing an import/export license.

#### **Our Changes to Inspection Fees (§ 14.94—What fees apply to me?)**

This final rule implements the fee structure described in the proposed rule. We clarified it to state that if updates to the fee schedule are not in place by December 31, 2012, the fees from 2012 will apply to shipments from 2013 and beyond until a new fee structure is in place. As we stated in the proposed rule, the regulations in 50 CFR 14 contain an inspection fee schedule for inspections of wildlife shipments. We are changing the inspection fee structure and will generally increase inspection fees to cover the increased cost of providing these services and the required support.

The inspection fees currently apply primarily to commercial importers and exporters whose shipments of wildlife are declared to, and inspected and cleared by, Service wildlife inspectors, to ensure compliance with wildlife protection laws. These fees are not intended to fully fund the wildlife inspection program, which includes both a compliance monitoring function involving services to the trade community and a vital smuggling interdiction mission focused on

detecting and disrupting illegal wildlife trade. The fee increase appropriately focuses only on recovering costs associated with services provided to importers and exporters engaged in legal wildlife trade.

In developing this final rule, the Service is guided by the Independent Offices Appropriations Act of 1952, codified at 31 U.S.C. 9701 ("the User Fee Statute"), which provides that services provided by Federal agencies are to be "self-sustaining to the extent possible." The Act allows for agencies to prescribe regulations establishing charges for services provided. Each charge is to be fair and based upon costs to the government, the value of the service to the recipient and the public policy or interest served. The Act also authorizes the establishment of charges for special benefits provided to a recipient that are at least as great as costs to the government of providing the special benefits.

We are also guided by the Office of Management and Budget (OMB) Circular No. A-25, Federal user fee policy, which establishes Federal policy regarding fees assessed for government services. It provides that user fees will be sufficient to recover the full cost to the Federal Government of providing the service, will be based on market prices, and will be collected in advance of, or simultaneously with, the rendering of services. The policy requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients.

The ESA (16 U.S.C. 1540(f)) also authorizes the Service to charge and retain reasonable fees for processing applications and for performing reasonable inspections of importation, exportation, and transportation of wildlife. The benefit of inspection fees is the shift in the payment of services from taxpayers as a whole to those persons who are receiving the government services.

While taxes may not change by the same amount as the change in inspection fee collections, there is a related shift in the appropriations of taxes to government programs, which allows those tax dollars to be applied to other programs that benefit the general public. Therefore, there could be a relative savings to taxpayers as a result of the changes in inspection fees.

The inspection and clearance of wildlife imports and exports is a special service provided to importers and exporters who are authorized to engage in activities not otherwise authorized for the general public. Our ability to effectively provide these services and the necessary support for these services

depends on inspection fees. Although the Service began collecting inspection fees in February 1986, we have been unable to achieve full cost recovery as several categories of importers and exporters have been exempt from paying fees, and fees were not established at levels that would cover all costs of the services provided to the trade community. Inspection fees currently recover less than half the costs of the inspection program. Exempt businesses have included most noncommercial importers/exporters; companies dealing in specific captive-bred or personally trapped furs, meat from bison, ostrich, and emu, and aquacultured sturgeon food items; and circuses.

The inspection fee schedule in §14.94 we are modifying has been in place since 1996. These fees were calculated based solely upon the salary and benefits of a journeyman-level wildlife inspector and did not attempt to recover other costs of conducting compliance inspections and providing clearance services to the wildlife trade community. Before the effective date of this final rule, commercial importers or exporters (i.e., entities that hold a Service import/export license) have paid a flat rate of \$55 per shipment for inspections at designated ports during normal working hours. Additional per-hour charges have been applied when inspections are conducted outside normal working hours; non-licensees receiving inspections outside normal working hours also paid these hourly charges.

All importers or exporters, whether licensed or not, have paid a \$55 administrative fee for inspections at a staffed nondesignated port, plus a 2-hour minimum of \$20 per hour for inspections during normal working hours. Higher hourly charges applied to inspections outside normal working hours. Importers and exporters whose inspections occur at nondesignated ports that are not staffed by Service inspectors have been charged all costs associated with providing the inspection, including salary, travel, transportation, and per diem costs.

Under this final rule, the inspection fee structure consists of a flat rate base inspection fee based upon the type of port (\$85 for designated ports or ports acting as designated ports; \$133 for staffed, nondesignated ports; and \$133 for nonstaffed, nondesignated ports) that reflects the recovery of specific direct and indirect costs; and two premium inspection fees, each \$19, reflecting additional labor costs associated with specific types of commodities. The inspection fee structure also provides for overtime fees. The inspection fees

reflect the cost of the services provided for routine shipments, shipments that contain species that are protected by Federal law or international treaty, and shipments that contain live specimens. Routine shipments are charged a base inspection fee based upon the type of port. Shipments containing protected species or live specimens are charged a premium inspection fee in addition to any applicable base inspection fee. If a shipment contains both protected species and live specimens, we charge two premium inspection fees in addition to any applicable base inspection fee.

For commercial shipments at designated ports, our regulations have required an inspection fee of \$55. The new inspection fee structure requires an \$85 base inspection fee for inspections at these ports. Upon the effective date, these shipments are subject to an additional \$30 in inspection fees per shipment (a change from \$55 to \$85) in 2008 under the new fee structure. A further increase of \$8 is spread out over the next 4 years (2009–2012), to yield an inspection fee of \$93 in 2012 for a routine shipment at a designated port. For fiscal year 2005, approximately half of the shipments at designated ports did not contain species that are protected by Federal law or international treaty or live specimens and would be considered routine shipments under these regulations.

In addition to the nonstaffed, nondesignated port base inspection fee (\$133 in 2008, rising to \$145 by 2012), all importers or exporters who use these types of ports will be required to pay any associated travel and per diem expenses needed for our wildlife inspector to conduct an inspection at these ports. Until this final rule becomes effective, our current regulations require importers or exporters who use these types of nonstaffed ports to pay these travel and per diem expenses, plus the salary of the wildlife inspector conducting the inspection, in addition to a base hourly administrative fee. However, the new fee structure simplifies the fees for a nonstaffed, nondesignated port to consist of a flat rate base fee of \$133 in 2008 to use these ports, which incorporates the salary of the wildlife inspector conducting the inspection, in addition to any travel and per diem costs. Importers and exporters using this type of port are also responsible for payment of premium fees if their shipment includes live or protected specimens, as is the case at the other types of ports.

We are publishing 5 years' worth of fees, for the period 2008–2012, and applying an inflation factor to the base

fees, premium fees, and overtime fees. Throughout the 5-year period, we will increase the base inspection fees annually, based upon inflation, using the Gross Domestic Product (GDP) indices. We will increase the premium inspection fees gradually over the 5-year period, reflecting both inflation and a gradual move to 100-percent cost recovery. Because we are publishing these inspection fee changes for a 5-year period, importers and exporters of wildlife can incorporate these fee increases into their budget planning. Within the 5-year period, we will publish a proposed rule on inspection fees that will be effective for the year 2013 and a number of years beyond, to be determined. In the event the rulemaking establishing inspection fees for 2013 and beyond is delayed beyond December 31, 2012, the inspection fees in this final rule for the year 2012 will be in effect for the year 2013 and beyond, as needed, until the updated rulemaking is finalized.

#### **Comments on Our Proposed Changes to § 14.94**

We received 39 comments on the proposed changes to the inspection fees. Thirty-four comments were generally opposed to the increased fees, although several commenters acknowledged the need to recover increasing costs. Three commenters strongly supported the increase in inspection fees, and two commenters indicated they had no concerns with the fees because they recognized the need to recover increased costs.

As previously mentioned, we must make the wildlife trade compliance program as self-sustaining as possible. The collection of inspection fees currently funds approximately 40 percent of the inspection program. The remainder is funded through limited appropriated funds. We do not consider it proper to pass these increased costs on to the general public who are not the primary beneficiaries of these services. In order to maintain the same level of inspection services, we have no option but to raise inspection fees and move toward achieving cost recovery from the trade for the compliance portion of the inspection program.

Many of the commenters opposed to the increased fees represent industries that do not import or export routine wildlife shipments, but import or export shipments which require additional specialized services for live or protected species. In our economic analysis, we determined that approximately 50 percent of the shipments imported or exported at designated ports were live or protected species and thus would be

subject to these increased premium fees. We do not consider it equitable to require the other half of the trade to pay even more fees in order to spread out the costs of these additional specialized services.

Other commenters opposed to the increased fees are currently exempt from fees and wish to remain exempt. As we state above, we must still provide services to these industries and we do not find it equitable that nonexempt businesses must pay more than their share of the costs in order for us to recover the costs not paid by exempt businesses. We realize that increases in inspection fees will increase the upfront cost of doing business. In the past, however, many businesses were subsidized by taxpayers and were not charged.

We received 16 comments stating that the new fees will discourage small shipments. We are aware that some businesses may run on a very low profit margin. This may be particularly true when importing or exporting a limited number of wildlife specimens. While the inspection fee increase is not intended to restrict or eliminate the international trade of wildlife, it may have an economic effect on those dealing in small shipments or transactions. However, the Service must expend time and resources to process these shipments. In addition, the costs of providing services to the international wildlife trade community are not dependent upon the size of the shipment.

It may be necessary for some businesses to reassess how they are conducting their activities to ensure that the most productive and efficient procedures are being used. While the Service understands that the increased inspection fees may impact some businesses, we must raise the inspection fees to ensure that we can adequately address our responsibilities under various wildlife laws and regulations. We do not anticipate that these inspection fees will greatly affect the number of specimens in international trade, although the number of shipments may be reduced due to consolidation.

Some commenters proposed that we exempt small businesses or establish a minimal processing fee. As we stated earlier in the rule, the majority of businesses importing and exporting wildlife are considered small businesses. The base inspection fees cover the basic minimum service we provide. Our inspection fee costs are calculated to represent average costs of providing the service. We cannot predict or control the frequency of

unusually small importations or exportations. To ensure that our basic costs are always covered, we charge the base inspection fee. At a minimum, any service we provide involves a fixed set of costs. These fixed costs include the direct costs of providing the service and the indirect costs of support providing the service. We cannot establish a lower minimum fee, because doing so would prevent us from recovering the full costs of providing the services.

Two commenters stated that the proposed inspection fees should have a sliding scale based upon the value or the quantity of specimens in a particular shipment. The base inspection fees resulting from our economic analysis apply to all shipments of wildlife regardless of quantity or value of specimens in a particular shipment. We calculated the average costs of providing the service. Therefore, some of the inspection fees may appear too high or too low based upon an individual's experience, but in fact the fees represent the average cost of providing the service for the type of shipment and type of port.

There is no direct correlation between the number of wildlife items in a shipment or the value of the shipment and the complexity of the inspection or costs of services that we must provide. A fee based upon quantity or value would automatically overcharge many large or high-value shipments and undercharge shipments of low value or quantity. Importers importing their routine shipment should not be required to bear the higher costs associated with inspections of live or protected species shipments simply because their routine shipment contains more specimens or specimens of a higher value.

We received one comment stating that inspection fees should distinguish between dealers and collectors. Imports and exports for personal use are exempt from base inspection fees at designated ports or ports acting as designated ports. If, however, collectors are importing and exporting for commercial purposes, including trade and barter, then they must be licensed and pay appropriate fees. For example, collectors who import small numbers of specimens that are promptly sold over the Internet are operating in no less of a commercial manner than is a dealer in wildlife specimens. In addition, the cost of providing services to a collector is no different than the cost of providing such services to a dealer. We consider it unfair to require dealers and other members of the wildlife trade community to bear a disproportionate share of the costs in order to exempt collectors. We therefore are making no

changes to the rule based upon this comment.

We received seven comments opposed to the proposed premium inspection fee for shipments containing live specimens or protected species. The inspection of shipments that contain live specimens requires considerably more knowledge, time, and equipment than is required for a routine shipment. In addition to the increased time required for inspection of the shipment, and oftentimes the need for additional officers, the inspection of these premium shipments in many cases requires the use of equipment that ensures the safety of the wildlife inspector conducting the inspection. Inspection of shipments containing protected species also requires considerably more time and knowledge. In addition, the costs of services supporting these types of shipments are considerably higher than for routine shipments.

The majority of commenters stated that the time it takes to inspect their shipment is no more than for other shipments and that any "rookie" could inspect their shipment. Other commenters indicated that the fees represented an unfair allocation of the costs to the Service or were not related to our costs. Other commenters felt the fees unfairly targeted certain segments of the trade. We calculated the average time to inspect these premium shipments, which on average is considerably longer than for a routine shipment. The time includes pre-inspection research and document review often conducted with the assistance of senior inspectors, as well as the actual physical inspection of the shipment.

Since the costs have been averaged for all shipments of a particular premium type, some users may view the fees as higher than the costs for their individual shipment. Under the current system, the higher costs to process these premium shipments are borne predominantly by the taxpayers but also by importers and exporters dealing in non-premium shipments. As stated in the proposed rule, these fees reflect both the increase in costs as well as the inclusion of cost components that had not been included before. This rule seeks to recover the costs associated with these special services and equipment from those directly responsible for the shipments. Therefore, we feel that the premium fees for live and protected specimens are warranted and have been set at reasonable levels. See § 14.94(f) for a definition of premium fees.

We received one comment that the travel and per diem costs associated

with a nonstaffed nondesignated port were unfair if there were multiple importers and exporters requesting inspection at the same time. The commenter suggested that we prorate travel and per diem expenses when multiple importers or exporters are involved. We agree with the commenter and have updated the regulations to reflect this change. Although this circumstance is rare, we will charge prorated travel, transportation, and per diem costs when a wildlife inspector travels to process shipments for multiple importers or exporters at the same location. However, each shipment will be assessed the nondesignated port base inspection fee and, if applicable, the appropriate premium inspection fees.

We received two comments suggesting that we "abandon normal work schedules" for wildlife inspectors thus eliminating the need for overtime charges. The majority of activities involving the clearance of imports and exports, such as working with customs brokers and CBP, in addition to frequent communication with the regulated public, are conducted during normal business hours. We recognize, however, that some shipments, particularly those with live specimens, are imported or exported outside normal business hours. The Service does not have the staff resources to provide regular service 7 days a week, 24 hours a day, at all locations. In addition, other Federal inspection service agencies do not work these hours without charging overtime.

However, in several locations, our wildlife inspectors do work shifts to process express shipments. Under Federal law, we must compensate wildlife inspectors who regularly work overtime hours. In order to recover the costs for these additional salary and benefit expenses, whether our inspectors are working overtime or are working a normal shift during generally understood overtime hours, we must have the users of these overtime services compensate the government through overtime charges. We believe it is more equitable to have the importers and exporters of after hours shipments pay for these additional services rather than requiring higher fees for all shipments.

We received five comments questioning how the proposed overtime and inspection fees apply to multiple shipments. As we previously stated, and is currently the practice, if an importer or exporter has multiple shipments at the same time and the same location, they will only be assessed one overtime fee for the inspection of those shipments. However, we will assess each shipment the appropriate base

inspection fee and, if applicable, the appropriate premium inspection fees.

### Calculation of Inspection Fees

As stated in the proposed rule, we conducted an economic analysis of the costs associated with the services provided to the legal wildlife trade community, and we created an inspection fee template (§ 14.94(h)) that formed the basis for the determination of this inspection fee increase. The economic analysis used data on shipment types and quantities, inspection times required for different types of shipments, and direct and indirect costs associated with the services provided to the legal wildlife trade community.

In order to calculate these inspection fees, we analyzed the actual total costs of providing services to the legal wildlife trade community during fiscal year 2005 as compared to the actual total money that we collected for activities authorized by the wildlife inspection program during fiscal year 2005.

The total costs include wildlife inspector salaries and benefits; the appropriate portion of our managers' salaries and benefits; direct costs such as vehicle operation and maintenance, equipment purchase and replacement, data entry and computer support for the Service's electronic filing system, communications costs, office supplies, uniforms, and administrative costs; and indirect costs such as office space. We calculated these costs using a Service-wide standard of 22 percent of direct costs. The total cost of providing services to the legal wildlife trade community during fiscal year 2005 was \$20,083,627.

The total amount of money that we collected for activities authorized by the wildlife inspection program during fiscal year 2005 was \$8,724,289. This total includes application fees for import/export licenses, designated port exception permits, and CITES permits and certificates, as well as inspection and overtime fees. At the time of our analysis, our data did not distinguish between license and permit fees and inspection fees. However, it is readily apparent that whatever portion of this total is derived from inspection fees, it falls well below the \$20,083,627 we spent on the wildlife trade compliance program during fiscal year 2005. Subsequent to the proposed rule, we instituted a revenue tracking system to separate inspection fees, including overtime, from designated port exception permit application fees and CITES document application fees.

The inspection of shipments that contain species protected by Federal law or international treaty or live specimens requires considerably more knowledge, time, and equipment than is required for a routine shipment. In addition to the increased time required for document inspection and handling of the shipment, the inspection of these "premium" shipments requires more thorough knowledge of Federal law or international treaty, or, in the case of shipments containing live specimens, the use of equipment that ensures the safety of the wildlife inspector conducting the inspection. Inspection of live shipments routinely requires the services of more than one wildlife inspector and may also require timely consultation with outside experts.

In addition, there are other costs associated with the inspection of premium shipments. In many instances, foreign documents that are presented for clearance of shipments containing protected species under CITES must be verified with foreign governments, a process that can be extremely time consuming. These foreign documents must be stored and recorded in our electronic database. Data on shipments containing wildlife protected under CITES must be analyzed for quality and reported internationally on an annual basis as one of our obligations as a party nation to this international treaty.

Since the trade compliance portion of the wildlife inspection program is to be "self-sustaining to the extent possible," we created an inspection fee structure that will provide 100-percent cost recovery by the end of the 5-year period 2008–2012. If we had developed an inspection fee structure to provide 100-percent cost recovery immediately, the initial premium fees would have been substantially higher than the premium fees described in this final rule.

During the development of the inspection fee structure, we estimated the inflation rate based upon the GDP. The GDP indices are obtained from the Economic Report of the President, which projects the growth of real GDP. For the 5-year period covered in this final rule, the GDP indices were as follows: 2.1 percent for 2008, 2009, and 2010, and 2.2 percent for 2011 and 2012. We decided to use inflation using the GDP indices as the only factor contributing to the increased costs by the end of the 5-year period. This is a conservative approach since wildlife inspector salaries and benefits could increase at a substantially greater rate than inflation by the end of the 5-year period. While salaries may increase consistent with inflation, promotions

would increase salaries considerably more than inflation.

In order to calculate these inspection fees, we estimated what the fiscal year 2005 base inspection fees and premium inspection fees would need to be to provide 100-percent cost recovery by the end of the 5-year period, and inflated those fees to 2008 dollars. We used this approach, because this rulemaking will not be finalized until 2008, and if, at that time, we used 2005 dollars consistent with actual total costs during fiscal year 2005, 100-percent cost recovery by the end of the 5-year period would not be possible.

It is extremely difficult to estimate what portion of the money we collected for activities authorized by the wildlife inspection program was derived from travel and per diem expenses and overtime fees we received. Currently, our data do not distinguish between license and permit fees and inspection fees. However, these amounts are a very small portion of the total amount that is derived from inspection fees, and will have little impact on the total amount of money that we collect for activities authorized by the wildlife inspection program. Therefore, during the development of the inspection fee structure, we decided not to include overtime fees or salary, travel, and per diem expenses collected at a nonstaffed, nondesignated port.

During the development of the inspection fee template, we considered the impact that increased inspection fees would have on small businesses. Essentially all of the businesses that engage in commerce by importing or exporting wildlife are considered small businesses according to the Small Business Administration (SBA). Examples of some of these businesses can be placed in the following SBA categories: "Zoos and Botanical Gardens," with an SBA size standard of \$6.0 million in average annual receipts; "Merchant wholesalers, nondurable goods," with an SBA size standard of 100 employees; "Leather and allied product manufacturers," with an SBA size standard of 500 employees; and "Clothing and Clothing Accessories Stores," with an SBA size standard ranging from \$6.0 million to \$7.5 million in average annual receipts.

Since essentially all of these businesses are small, we believe that those companies that deal with more complex shipments requiring additional services from us, such as those containing species that are protected by Federal law or international treaty or live specimens, should assume a greater share of the costs associated with the additional services. The alternative is to



spread these additional costs among all importers and exporters.

To help determine how realistic our inspection fee increases are, we calculated what the inspection fees in place since 1996 would be equal to in the beginning of and by the end of the 5-year period, based only on inflation using the GDP indices. This calculation yielded an inspection fee of \$70 for 2008, and an inspection fee of \$76 by the end of the 5-year period in 2012. Both of these projected fees are quite close to the base inspection fee of \$85. Recognizing that the 1996 inspection fees were based only on the salary and benefits of a journeyman-level wildlife inspector and did not take into account all of the other costs associated with the services provided to the legal trade community, we think the base inspection fee, which is based on all of the associated costs of the wildlife inspection program, is reasonable.

#### **Comments on Calculation of Inspection Fees**

We received one comment suggesting that the Service's Office of Law Enforcement should have a better way to track import/export license, CITES permit, and inspection fees. We agree with the commenter and have already implemented internal controls to track these fees since the publication of the proposed rule.

We received one comment stating that the Service did not address the criteria under the User Fee Statute when establishing the new inspection fees. We disagree. As stated previously, the criteria under the User Fee Statute include that the fees be fair, and that they be based upon actual costs to the government, the value of the service to the recipient, and public policy or interests that are being served. We consider these fees to be fair for reasons stated in this final rule. The fees reflect the actual cost to the government for the specific services provided, and they were established at levels that will provide 100-percent cost recovery for the wildlife trade compliance program, as authorized by the User Fee Statute. In addition, if we do not increase inspection fees, funds will not be available to continue to provide inspection services at a level sufficient to meet customer demand.

#### **Exemptions to Inspection Fees (New Section, § 14.94(k))**

During the development of the inspection fee template, we decided that some individuals or organizations, or certain commodities, should continue to be exempt from inspection fees. These longstanding exemptions reflect the lack

of regular inspection services provided and the limited numbers of shipments for which services are required.

Government agencies at the Federal, State, local, or tribal level have been exempt from inspection fees in the past and will continue to be exempt from the inspection fees, including overtime fees. The retention of this exemption complements other Service regulations.

Individuals who import or export shipments of 100 or fewer raw furs or raw, salted, or crusted mammal hides or skins between the United States, Canada, or Mexico have been exempt from inspection fees in the past and will continue to be exempt from designated port base inspection fees. However, this exemption applies only to shipments of mammal furs, hides, or skins lawfully taken from the wild by those individuals or their family members in the United States, Canada, or Mexico, from species that are not protected under parts 17, 18, or 23 of title 50. These individuals will still require an import/export license and be responsible for overtime fees for any shipments inspected outside normal working hours.

Individuals or organizations that import or export shipments of wildlife for noncommercial purposes at designated ports that do not contain species that are protected by Federal law or international treaty, along with individuals or organizations that import or export live specimens, will continue to be exempt from designated port inspection fees. These individuals or organizations will still be responsible for overtime fees for any shipments inspected outside normal working hours, as well as all fees for import or export through a nondesignated port.

Individuals or organizations that import or export shipments of wildlife for noncommercial purposes at designated ports that contain species that are protected by Federal law or international treaty, along with individuals or organizations that import or export live specimens, will pay premium inspection fees when importing or exporting via air, ocean, rail, or truck cargo. However, these shipments will continue to be exempt from base inspection fees. Examples of these individuals or organizations would include but not be limited to: individuals importing or exporting personal pets that may or may not be protected species; hunters importing or exporting protected game species; or public museums, zoos, and scientific or educational institutions importing or exporting protected species or live specimens.

Inspection of these premium shipments requires considerably more knowledge, time, and equipment than is required for a routine shipment. It should be noted that the Service does not consider these individuals or organizations to be exempt from paying for other services that provide benefits. Our regulations in part 13 already require individuals or organizations to pay application fees for permits that authorize them to engage in activities not otherwise authorized for the general public. We note that other agencies do not make a distinction between commercial and noncommercial individuals or organizations when considering inspection fees for import and export. Based upon these findings, we decided to charge premium fees but exempt these shipments from base inspection fees as long as the shipments are imported or exported through a designated port. These shipments will continue to be subject to overtime fees and all fees for import or export through a nondesignated port.

Individuals or organizations who import or export shipments that contain protected species or live specimens for noncommercial purposes at designated ports by using the mail, by traveling as passengers, or by using a personal vehicle will be exempt from designated port base inspection fees and premium inspection fees. However, they will still be responsible for overtime fees for any inspections that take place outside normal working hours. These shipments are currently exempt from designated port inspection fees other than overtime charges. We decided to retain this exemption under these circumstances because we do not consistently provide inspection services at mail facilities or passenger terminals, or for personal vehicles.

Until the effective date of this final rule, our regulations exempt certain captive-bred mammals from designated port inspection fees as part of an exemption from the import/export license requirements. With this final rule, however, we are establishing the import/export license requirement for these types of shipments. Although most businesses have not taken advantage of the exemption as discussed earlier, any exempted shipments still require inspection and clearance. This exemption has also had the unintended consequence of creating a monetary incentive to falsely declare certain mammals and their products as captive-bred.

By policy, we currently exempt the export of sturgeon and paddlefish that are captive-bred in aquaculture facilities from inspection fees, including

nondesignated port fees, if the shipments are for immediate human or animal consumption. This exemption applies to caviar, meat, and other food items, but does not cover live fish. By policy, we also currently exempt the export of American bison, ostrich, and emu meat produced in ranching operations in the United States from inspection fees if the meat is intended for human consumption. All of these shipments still require inspection and clearance by us.

Our ability to effectively provide inspection and clearance services and the necessary support for these services depends on inspection fees. When we exempted these types of shipments from inspection fees, the costs associated with inspection and clearance have been borne either by the taxpayers through appropriated funds or by other importers and exporters. The services provided to these exempt businesses are specialized services that do not directly benefit the public as a whole and, as such, the costs should not be borne by the taxpayer. As discussed earlier, the majority of importers and exporters of wildlife are small businesses. We do not believe it equitable that nonexempt businesses must pay more than their share of the costs in order for us to recover the costs not paid by exempt businesses.

#### Comments on § 14.94(k)

We received one comment regarding our proposed retention of the exemption for individuals or organizations who import or export shipments that contain protected species or live specimens for noncommercial purposes at designated ports by using the mail, by traveling as passengers, or by using a personal vehicle. The commenter stated that passengers on international flights should be assessed premium inspection fees since the majority of these shipments contain protected species. We disagree with this comment and will retain the exemption as proposed. As we stated earlier, we do not consistently provide inspection services for noncommercial shipments imported or exported at mail facilities or passenger terminals, or by personal vehicles.

One commenter specifically opposed retaining the exemption for individuals who import or export shipments of 100 or fewer raw furs or raw, salted, or crusted mammal hides or skins between the United States, Canada, or Mexico. Two other commenters generally opposed the retention and stated that if cost recovery was our objective, then we should remove all exemptions. One commenter stated that this exemption could allow unscrupulous businesses to

break up their shipments to get around license fees. One commenter approved of the continuation of this exemption, while two commenters requested that we extend the current exemption from inspection fees for shipments of raw furs or raw, salted, or crusted hides or skins to include shipments of processed or manufactured furs of similar size and value. We decline to accept the recommendations made in these comments.

The current exemption from inspection fees for shipments consisting of raw furs or raw, salted, or crusted hides or skins, or separate fur or skin parts lawfully taken from the wild in the United States, Canada, or Mexico, is intended to provide assistance to subsistence hunters and trappers. We believe retention of this exemption is warranted. However, when we consider the difficulties that are inherent in subsistence hunting, we do not think that commercial importers or exporters of processed or manufactured furs should be entitled to the same assistance extended to subsistence hunters. Finally, we have the ability to monitor the volume of importing and exporting by a business or individual and have not detected any abuse of this exemption. Therefore, we are making no changes to the rule based upon these comments.

We received four comments from the U.S. white sturgeon farming community stating that we should not remove the exemption from inspection fees for exports of sturgeon and paddlefish that are captive-bred in aquaculture facilities and are intended for immediate human or animal consumption. We also received four comments in favor of removing the exemption. Two commenters in favor stated that the businesses required inspection services and should therefore pay for this service as do other importers and exporters. Two other commenters stated that if cost recovery was our objective, then we should remove all exemptions.

The commenters opposed to the removal of the exemption argued that since the species are farmed, they are not wildlife and are not subject to the fees. The commenters also stated that poaching is already controlled at the source and farming protects endangered species by decreasing pressure on wild stock. Though we recognize that farming of white sturgeon may relieve pressure on wild stocks, we would remind the commenters that the ESA, under which permission must be obtained to engage in the business of importing or exporting wildlife, defines wildlife to include specimens that are born or bred in captivity. In addition, CITES requires

CITES documents for international trade of all sturgeon and paddlefish regardless of whether the species are captive-bred. Finally, the commenters argued that the proposed new fees were too high. See the preamble discussion on the inspection fee schedule (Our Changes to Inspection Fees (§ 14.94—What fees apply to me?)) for additional discussion of fees.

As stated above, we currently exempt the export of sturgeon and paddlefish that are captive-bred in aquaculture facilities from inspection fees, including nondesignated port fees, if the shipments are for immediate human or animal consumption. However, these shipments still require inspection and clearance by us, and exporters often use ports with little or no staff available. As we have previously stated, we do not find it equitable that nonexempt businesses must pay more than their share of the costs in order for us to recover the costs not paid by exempt businesses.

Since foreign sturgeon aquaculture facilities must pay inspection fees when their goods are imported, removal of the exemption for domestic businesses will establish a level playing field. Therefore, we are removing the inspection fee exemption for businesses that export food items derived from aquacultured sturgeon and paddlefish.

Four commenters supported the elimination of the inspection fee exemption for businesses that export meat from American bison, ostrich, and emu. Two commenters stated that if cost recovery was our objective, then we should remove all exemptions. One commenter stated that those who utilize the inspection services must bear the cost, while another commenter stated that these businesses require inspection and clearance and are operating commercially.

We agree with the commenters. As we have stated throughout this final rule, we do not find it equitable that nonexempt businesses must pay more than their share of the costs in order for us to recover the costs not paid by exempt businesses. In addition, since both imports and re-exports with an origin other than the United States are subject to the inspection fees, removal of the exemption for domestic businesses will establish a level playing field. Therefore, we are removing the inspection fee exemption for businesses that export food items derived from ranch-raised American bison, ostrich, and emu.

#### Other Relevant Comments

We received one comment stating that the regulations should contain a

provision that would allow prior disclosures to be made without penalty if non-compliance is found internally by businesses. As we stated in our final rule of August 23, 2007 (72 FR 48401), on the implementation of CITES, we cannot accept this recommendation because this provision would undermine our enforcement efforts and our obligations under international and domestic laws. We treat specimens traded contrary to law the same as other forms of illegally traded goods.

We received 22 comments regarding an exemption from all Service import or export requirements for ranch-raised elk and deer and their products of Canadian origin. The commenters suggested we could reduce our costs by exempting their commodities from regulation. We also received one comment requesting that shipments containing mother of pearl products should be exempt from all Service import or export requirements.

The only wildlife species completely exempt from Service import/export requirements are domesticated species that have become modified, through selective breeding and a long historical association with humans, from the wild species from which they were derived. The domesticated species can differ from the wild species in color, form, function, and/or behavior to such an extent that the domesticated species is unable to survive in the wild without human care. The Service does not consider ranch-raised elk and deer or mother of pearl to meet these requirements. In addition, granting an exemption for products only of Canadian origin might create a protectionist effect for Canadian goods.

We received one comment stating that the Service should reduce or eliminate inspection fees for the import and export of dead insect specimens. We decline to adopt this suggestion. As stated in our proposed rule, the goal of this fee increase is to recover the costs of the compliance portion of the Service's wildlife inspection program. We do not consider it to be fair or equitable for importers or exporters of wildlife other than dead insect specimens to bear the additional costs incurred by reducing or eliminating fees for dead insect specimens. These shipments require inspection and clearance by us as do all other wildlife shipments; therefore, we are making no changes to the rule based upon this comment.

We received one comment requesting that the funds collected by the Service remain in the port where they are collected. The commenter indicated that some ports receive subsidized funding

from customs brokers associations. We decline to adopt this recommendation. Inspection fees monies are collected to support the entire import/export compliance program, and not all of the costs are resident in a particular port. We note that the Service does not receive any funding from customs brokers associations.

One commenter questioned whether this rule applied to plants, and requested confirmation of any other changes involving hunting and fishing, other than the need for individuals or organizations that import or export shipments for noncommercial purposes that contain protected species to pay premium fees. This rule applies only to fish and wildlife as defined in 50 CFR 10.12 and does not apply to plants. With respect to additional provisions that might affect hunting or fishing, the commenter should read § 14.91, which provides examples of license requirements related to hunters and taxidermists.

One commenter suggested that the Service should eliminate inspections on Canada-U.S. shipments except for CITES species. We decline to adopt this suggestion. The Service must enforce the ESA. The ESA provides us with broad authority to regulate the import and export of fish and wildlife through licensing importers and exporters, inspecting shipments, and charging and retaining reasonable fees for processing applications and performing inspections. This authority is not limited to endangered or threatened species or those protected under CITES. As previously stated, this broad authority requires importers and exporters who wish to engage in the international trade of wildlife to obtain permission to do so. Eliminating inspections of shipments to and from Canada would undermine our obligations under U.S. law and would unfairly discriminate against shippers trading with countries other than Canada.

#### **Required Determinations**

#### **Regulatory Planning and Review (Executive Order 12866)**

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

#### **Regulatory Flexibility Act (5 U.S.C. 601 et seq.)**

This final rule will not have a significant economic effect on a substantial number of small businesses as defined under the Regulatory Flexibility Act. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. During the development of the inspection fee template, we considered the impact that increased inspection fees would have on small businesses. Essentially all of the businesses that engage in commerce by importing or exporting wildlife or wildlife products would be considered small businesses according to the Small Business Administration (SBA). Examples of some of these businesses can be placed in the following SBA categories: "Zoos and Botanical Gardens," with an SBA size standard of \$6.0 million in average annual receipts; "Merchant wholesalers, nondurable goods," with an SBA size standard of 100 employees; "Leather and allied product manufacturers," with an SBA size standard of 500 employees; and "Clothing and Clothing Accessories Stores," with an SBA size standard ranging from \$6.0 million to \$7.5 million in average annual receipts.

This final rule will not have a significant economic effect on these businesses. In most cases, the increased inspection fees will represent a small fraction of the value of the affected wildlife shipment. In addition, the small entities directly affected by this final rule are not likely to bear the full burden of the inspection fee increases because some or most of the cost increases will be passed on to the purchasers of the wildlife.

#### **Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))**

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Does not have an annual effect on the economy of \$100 million or more.

The removal of two exemptions from our import/export license requirements for businesses that import or export certain captive-bred mammals or their products and circuses that import or

export wildlife will not adversely affect those businesses.

For fiscal year 2005, our records indicate that 2,628 shipments of captive-bred chinchilla, fisher, fox, marten, mink, muskrat, and nutria were imported or exported by 351 businesses. However, 296 of these businesses already have import/export licenses because they also trade in species other than these captive-bred mammals. We are proposing that the remainder of these businesses must obtain an import/export license, at a cost of \$100 per year. These changes will result in an additional cost to these businesses of \$5,500 as importers or exporters of these captive-bred mammals or their products ( $351 - 296 = 55$  businesses  $\times$  \$100 = \$5,500).

We estimate that approximately 30 circuses will import or export animals during a given year. We are proposing that these circuses must obtain an import/export license. These changes will result in an additional cost to these circuses of \$3,000 as importers or exporters of circus animals.

The total cost to businesses and circuses based upon the removal of two exemptions from our import/export license requirements will be approximately \$8,500.

We have determined that routine shipments must be charged a base inspection fee based upon the type of port. Shipments containing protected species or live specimens must be charged a premium inspection fee in addition to the base inspection fee. If a shipment contains both protected species and live specimens, we charge two premium inspection fees in addition to the base inspection fee. The fee structure requires an \$85 base inspection fee for inspections at designated ports and a \$19 premium inspection fee.

The greatest increased costs contained in the fee structure apply to wildlife shipments imported or exported at nonstaffed, nondesignated ports. Assuming that every shipment we inspect occurs at one of these ports, the total net annual economic effect in the worst-case scenario will be approximately \$20 million.

For inspections at these ports, our regulations have required an administrative fee of \$55 plus all costs associated with the inspection and clearance, including salary, travel, and per diem for the wildlife inspector conducting the inspection. The new fee structure requires a \$133 base inspection fee for inspections at these ports. Assuming that every shipment at these ports contained species that are protected by Federal law or

international treaty and live specimens, these shipments will require an additional \$38 in premium inspection fees, for a total of \$171 per shipment.

The worst-case scenario for inspections at nonstaffed, nondesignated ports, as described above, and not including travel and per diem, will result in an additional \$116 in inspection fees per shipment (the difference between \$171 and \$55) under the new fee structure. We estimate that we inspect approximately 170,000 shipments per year nationwide. Assuming that all shipments are inspected at nonstaffed, nondesignated ports, the net annual economic effect could equal \$19,720,000 under the new fee structure. While the new fee structure of \$133 to use these ports does require the additional payment of travel and per diem expenses, it does not require the additional payment of the salary of the wildlife inspector conducting the inspection. In many cases, the base fee of \$133 will be considerably less than the salary of the wildlife inspector conducting the inspection.

In reality, nearly one-half of our inspections are conducted at designated ports for shipments that do not contain species that are protected by Federal law or international treaty or live specimens, so the net annual economic effect of the new fee structure is considerably less than \$19,720,000. For commercial shipments at designated ports, our regulations have required an inspection fee of \$55. The new fee structure requires an \$85 base inspection fee for inspections at designated ports. These shipments will result in an additional \$30 in inspection fees per shipment (the difference between \$85 and \$55) under the new fee structure. For fiscal year 2005, we inspected 83,203 shipments at designated ports that did not contain species that are protected by Federal law or international treaty or live specimens. The net annual economic effect for inspections of these shipments will/could equal \$2,496,090 under the new fee structure.

As described above, the removal of two exemptions from our import/export license requirements for businesses that import or export certain captive-bred mammals or their products and circuses means that these entities must pay inspection fees authorized under their import/export license.

For fiscal year 2005, our records indicate that 2,628 shipments of certain captive-bred mammals or their products were imported or exported by 351 businesses. These new regulation changes will result in an additional cost

to these businesses of \$223,380 when they import or export shipments of certain captive bred mammals or their products at designated ports (2,628 shipments  $\times$  \$85 base inspection fee at designated ports).

Our records indicate that, at most, there could be 75 shipments of circus animals imported or exported during a given year by approximately 30 circuses. Circuses will likely be assessed two premium inspection fees per shipment, since most of their shipments will contain live specimens that are protected by Federal law or international treaty. Under the worst-case scenario, these changes will result in an additional cost to these circuses of \$9,225, when they import or export circus animals at designated ports (75 shipments  $\times$  \$85 base inspection fee at designated ports + 75 shipments  $\times$  \$38 premium inspection fee).

For fiscal year 2005, our records indicate that 7,800 shipments that contained species that are protected by Federal law or international treaty or live specimens were imported or exported for noncommercial purposes at designated ports via air, ocean, rail, or truck cargo. With the effective date of this final rule, these persons must pay premium inspection fees for these shipments. In many cases, these shipments will contain species that are protected by Federal law or international treaty and live specimens. Under the worst-case scenario, these changes will result in an additional cost to these persons of \$296,400, when they import or export these shipments at designated ports (7,800 shipments  $\times$  \$38 premium inspection fee).

For fiscal year 2005, our records indicate that 145 shipments of American bison, ostrich, emu, or sturgeon and paddlefish products were exported. These changes will result in an additional cost to these businesses of \$12,325 when they export shipments of American bison, ostrich, or emu meat at designated ports (145 shipments  $\times$  \$85 base inspection fee at designated ports).

The total cost to businesses, circuses, and persons importing or exporting species that are protected by Federal law or international treaty or live specimens for noncommercial purposes, based upon the removal of license fee exemptions, will be approximately \$541,330.

Considering that nearly one-half of the shipments that we inspect account for an annual economic effect of just under \$2.5 million, it is safe to assume that all of the other types of shipments that we inspect at all of our other ports, when combined with this amount, will total far less than \$100 million. The

removal of import/export license exemptions and inspection fee exemptions accounts for an additional \$549,830. To summarize, this final rule will have an annual economic effect of far less than \$100 million.

Though this final rule will not have an annual economic effect of \$100 million, we recognize that these fee increases will have a negative effect on small entities. Since essentially all of the businesses that engage in commerce by importing or exporting wildlife would be considered small businesses, and considering that the wildlife trade compliance program is to be "self-sustaining to the extent possible," we have no option but to raise inspection fees to cover the increasing costs associated with the wildlife trade compliance program. It would not be appropriate to pass these increased costs on to the general public, who are not the primary beneficiaries of these services.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

This final rule will increase costs for individual industries and potentially consumers; however, because the wildlife trade compliance program is to be "self-sustaining to the extent possible," we have no option but to raise inspection fees to cover the increasing costs associated with the wildlife trade compliance program. If we do not increase inspection fees, funds will not be available to continue to provide these services at a level sufficient to meet customer demand.

c. Does not have significant negative effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies.

This final rule will not have significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises, because foreign-based enterprises that are subject to U.S. jurisdiction must comply with the same regulatory requirements as U.S.-based enterprises who import or export wildlife. In addition, this final rule removes the exemption from an import/export license requirements and payment of inspection fees for shipments of certain captive-bred mammals or their products. Due to shipping and other business practices, foreign-sourced mammals or their products imported into the United States are more likely to be declared as captive-bred and appropriate for the current exemption than exports of U.S.-sourced mammals or their products. The removal of the exemption will result in

equal treatment of foreign-sourced and U.S.-sourced mammals or their products.

#### **Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)**

Under the Unfunded Mandates Reform Act:

a. This final rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

We are the lead Federal agency for implementing regulations that govern and monitor the importation and exportation of wildlife and carrying out the United States' obligations under CITES. Therefore, this final rule has no effect on small governments' responsibilities.

b. This final rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of \$100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

This rule will not result in any combined expenditure by State, local, or tribal governments.

#### **Executive Order 12630 (Takings)**

Under E.O. 12630, this final rule does not have significant takings implications. A takings implication evaluation is not required. Under E.O. 12630, this final rule does not affect any constitutionally protected property rights. This final rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

#### **Executive Order 13132 (Federalism)**

Under E.O. 13132, this final rule does not have significant Federalism effects. A Federalism evaluation is not required. This final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### **Executive Order 12988 (Civil Justice Reform)**

Under E.O. 12988, the Office of the Solicitor has determined that this final rule does not overly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this final rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize disagreements, provides a clear legal standard for affected actions,

and specifies in clear language the effect on existing Federal law or regulation.

#### **Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

This final rule does not contain any new information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has approved the information collection requirements contained in this subpart I and assigned OMB Control Number 1018-0092, which expires on November 30, 2010. The Service may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **National Environmental Policy Act**

We analyzed this rule under the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and part 516 of the Department of the Interior's Departmental Manual (DM), Chapter 8. This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to publication of these amendments to our import/export regulations, because the changes are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10). Concerning the actions that are the subject of this rulemaking, NEPA has been complied with at the project level where each change was developed. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A).

#### **Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)**

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import or export wildlife.

**Executive Order 13211 (Energy Supply, Distribution, or Use)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule will clarify the import/export license and fee requirements, adjust the inspection fee schedule, and update license and inspection fee exemptions. This final rule is not a significant regulatory action under E.O. 12866, and it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 14**

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

**Regulation Promulgation**

■ For the reasons described above, we are amending part 14, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

**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. 668, 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 9701.

■ 2. Revise subpart I to read as follows:

**Subpart I—Import/Export Licenses and Inspection Fees**

- Sec.
- 14.91 When do I need an import/export license?
- 14.92 What are the exemptions to the import/export license requirement?
- 14.93 How do I apply for an import/export license?
- 14.94 What fees apply to me?

**Subpart I—Import/Export Licenses and Inspection Fees**

**§ 14.91 When do I need an import/export license?**

(a) The Endangered Species Act (16 U.S.C. 1538(d)(1)) makes it unlawful for any person to engage in business as an importer or exporter of certain fish or wildlife without first having obtained permission from the Secretary. For the purposes of this subchapter, engage in business means to import or export wildlife for commercial purposes.

(b) Except as provided in § 14.92, if you engage in the business of importing or exporting wildlife for commercial purposes (see § 14.4), you must obtain an import/export license prior to importing or exporting your wildlife shipment.

(c) The following table includes some examples of when an import/export license is required:

If I import into the United States or export from the United States	. . . do I need an import/export license?
(1) Wildlife in the form of products such as garments, bags, shoes, boots, jewelry, rugs, trophies, or curios for commercial purposes.	Yes.
(2) Wildlife in the form of hides, furs, or skins for commercial purposes	Yes.
(3) Wildlife in the form of food for commercial purposes	Yes.
(4) As an animal dealer, animal broker, pet dealer, or pet or laboratory supplier	Yes.
(5) As an individual owner of a personally owned live wildlife pet for personal use	No.
(6) As a collector or hobbyist for personal use	No.
(7) As a collector or hobbyist for commercial purposes, including sale, trade or barter	Yes.
(8) As a laboratory researcher or biomedical supplier for commercial purposes	Yes.
(9) As a customs broker or freight forwarder engaged in business as a dispatcher, handler, consolidator, or transporter of wildlife or if I file documents with the Service on behalf of others.	No.
(10) As a common carrier engaged in business as a transporter of wildlife	No.
(11) As a taxidermist, outfitter, or guide importing or exporting my own hunting trophies for commercial purposes	Yes.
(12) As a taxidermist, outfitter, or guide transporting or shipping hunting trophies for clients or customers	No.
(13) As a U.S. taxidermist receiving a U.S. client's personal hunting trophies after import clearance for processing	No.
(14) As a U.S. taxidermist importing wildlife from or exporting wildlife to foreign owners who are requesting my services	Yes.
(15) As a foreign owner of wildlife exporting my personal hunting trophies from the United States to my home	No.
(16) As a circus for exhibition or resale purposes	Yes.
(17) As a Federal, State, municipal, or tribal agency	No.
(18) As a public museum, or public scientific or educational institution for noncommercial research or educational purposes	No.

**§ 14.92 What are the exemptions to the import/export license requirement?**

(a) *Certain wildlife.* Any person may engage in business as an importer or exporter of the following types of wildlife without obtaining an import/export license:

(1) Shellfish (see §10.12 of this chapter) and nonliving fishery products that do not require a permit under parts 16, 17, or 23 of this subchapter, and are 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;

(2) Live farm-raised fish and farm-raised fish eggs of species that do not

require a permit under parts 16, 17, or 23 of this subchapter, that meet the definition of “bred-in-captivity” as stated in § 17.3 of this subchapter and that are for export only; and

(3) Live aquatic invertebrates of the Class Pelecypoda, commonly known as oysters, clams, mussels, and scallops, and their eggs, larvae, or juvenile forms, that do not require a permit under parts 16, 17, or 23 of this subchapter, and are exported only for the purposes of propagation or research related to propagation; and

(4) Pearls that do not require a permit under parts 16, 17, or 23 of this subchapter.

(b) *Certain persons.*

(1) The following persons may import or export wildlife without obtaining an import/export license, provided that these persons keep records that will fully and correctly describe each importation or exportation of wildlife made by them and the subsequent disposition made by them with respect to the wildlife.

(i) Public museums, or other public, scientific, or educational institutions, importing or exporting wildlife for noncommercial research or educational purposes; and

(ii) Federal, State, tribal, or municipal agencies.

(2) Subject to applicable limitations of law, duly authorized Service officers at

all reasonable times will, upon notice, be given access to these persons' places of business, an opportunity to examine their inventory of imported wildlife or the wildlife to be exported, the records described in paragraph (1) of this section, and an opportunity to copy those records.

**§ 14.93 How do I apply for an import/export license?**

(a) *Application form.* You must submit a completed FWS Form 3-200-3, including the certification found on the form and in § 13.12(a) of this subchapter, to the appropriate regional Special Agent in Charge under the provisions of this subpart and part 13 of this subchapter.

(b) *Import/export license conditions.* In addition to the general permit conditions in part 13 of this subchapter, you must comply with the following conditions:

(1) You must comply with all requirements of this part, all other applicable parts of this subchapter, and any specific conditions or authorizations described on the face of, or on an annex to, the import/export license;

(2) You must pay all applicable license and inspection fees as required in § 14.94;

(3) You are responsible for providing current contact information to us, including a mailing address where you will receive all official notices the Service sends;

(4) You must keep, in a U.S. location, the following records that completely and correctly describe each import or export of wildlife that you made under the import/export license and, if applicable, any subsequent disposition that you made of the wildlife, for a period of 5 years:

(i) A general description of the wildlife, such as "live," "raw hides," "fur garments," "leather goods," "footwear," or "jewelry";

(ii) The quantity of the wildlife, in numbers, weight, or other appropriate measure;

(iii) The common and scientific names of the wildlife;

(iv) The country of origin of the wildlife, if known, as defined in § 10.12 of this subchapter;

(v) The date and place the wildlife was imported or exported;

(vi) The date of the subsequent disposition, if applicable, of the wildlife and the manner of the subsequent disposition, whether by sale, barter, consignment, loan, delivery, destruction, or other means;

(vii) The name, address, telephone, and e-mail address, if known, of the

person or business who received the wildlife;

(viii) Copies of all permits required by the laws and regulations of the United States; and

(ix) Copies of all permits required by the laws of any country of export, re-export, or origin of the wildlife.

(5) You must, upon notice, provide authorized Service officers with access to your place(s) of business at all reasonable times and give us an opportunity to examine your inventory of imported wildlife or the wildlife to be exported, the records required to be kept by paragraph (b)(4) of this section, and an opportunity to copy these records subject to applicable limitations of the law;

(6) You must submit a report containing the information you must keep in paragraph (b)(4) of this section within 30 days of receiving a written request from us; and

(7) An import/export license gives you general permission to engage in business as an importer or exporter of wildlife. An import/export license is in addition to, and does not supersede, any other license, permit, or requirement established by Federal, State, or tribal law for the import or export of wildlife.

(c) *Duration of import/export license.* Any import/export license issued under this section expires on the date shown on the face of the import/export license. In no case will the import/export license be valid for more than 1 year after the date of issuance.

(d) *Issuance, denial, suspension, revocation, or renewal of import/export license.* We may deny, suspend, revoke, restrict, or deny renewal of an import/export license to any person named as the holder, or a principal officer or agent of the holder, under any of the criteria described in part 13 of this chapter or under the following criteria:

(1) Failure to pay fees, penalties, or costs required by this part;

(2) You repeatedly fail to notify our Service officers at the appropriate port at least 48 hours prior to the estimated time of arrival of a live or perishable wildlife shipment under § 14.54(a) or at least 48 hours prior to the estimated time of exportation of any wildlife under § 14.54(f);

(3) You repeatedly import or export certain types of wildlife without meeting the requirements of this part or other applicable parts of this subchapter.

**§ 14.94 What fees apply to me?**

(a) *Import/export license application fees.* You must pay the application and amendment fees, as defined in § 13.11(d)(4), for any required import/

export license processed under § 14.93 and part 13 of this subchapter.

(b) *Designated port exception permit application fees.* You must pay the application and amendment fees, as defined in § 13.11(d)(4), for any required designated port exception permit processed under subpart C of this part.

(c) *Designated port base inspection fees.* Except as provided in paragraph (k) of this section, an import/export license holder must pay a base inspection fee, as defined in § 14.94(h)(1), for each wildlife shipment imported or exported at a designated port or a port acting as a designated port. You can find a list of designated ports in § 14.12 and the criteria that allow certain ports to act as designated ports in §§ 14.16-14.19, § 14.22, and § 14.24 of this part.

(d) *Staffed nondesignated port base inspection fees.* You must pay a nondesignated port base inspection fee, as defined in § 14.94(h)(2), for each wildlife shipment imported or exported at a staffed nondesignated port, using a designated port exception permit issued under subpart C of this part. This fee is in place of, not in addition to, the designated port base fee.

(e) *Nonstaffed, nondesignated port base inspection fees.* You must pay a nondesignated port base inspection fee, as defined in § 14.94(h)(3), for each wildlife shipment imported or exported at a nonstaffed, nondesignated port using a designated port exception permit issued under subpart C of this part. You must also pay all travel, transportation, and per diem costs associated with inspection of the shipment. These fees are in place of, not in addition to, the designated port base fee. The Service will prorate charges for travel, transportation, and per diem costs if multiple importers or exporters require inspection at the same time at the same location. All applicable base and premium fees apply to each shipment.

(f) *Premium inspection fees.* You must pay a premium inspection fee in addition to any base inspection fees required in paragraphs (c), (d), and (e) of this section, as defined in § 14.94(h)(4), for the following types of shipments:

(1) Except as provided in paragraph (k) of this section, any shipment containing live or protected species, as defined in § 14.94(h)(4), imported or exported by an import/export license holder at a designated port or a port acting as a designated port. You can find a list of designated ports in § 14.12 and the criteria that allow certain ports to act as designated ports in §§ 14.16-14.19, § 14.22, and § 14.24;

(2) Any shipment containing live or protected species, as defined in § 14.94(h)(4), imported or exported via air, ocean, rail, or truck cargo, by persons not requiring an import/export license under § 14.91, at a designated port or a port acting as a designated port. You can find a list of designated ports in § 14.12 and the criteria that allow certain ports to act as designated ports in §§ 14.16–14.19, § 14.22, and § 14.24;

(3) Any shipment containing live or protected species, as defined in § 14.94(h)(4), imported or exported at a nondesignated port using a designated port exception permit issued under subpart C of this part.

(4) You must pay two premium inspection fees in addition to any base inspection fees required in paragraphs (c), (d), and (e) of this section, as defined in § 14.94(h)(4), if your wildlife shipment contains live and protected species.

(g) *Overtime fees.* You must pay fees for any inspections, including travel time, that begin before normal working hours, that extend beyond normal

working hours, or are on a Federal holiday, Saturday, or Sunday.

(1) Overtime fees are in addition to any base inspection fees or premium inspection fees required for each shipment. We will charge these fees regardless of whether or not you have an import/export license.

(2) Our ability to perform inspections during overtime hours will depend upon the availability of Service personnel. If we cannot perform an inspection during normal working hours, we may give you the option of requesting an overtime inspection.

(3) The overtime fee is calculated using a 2-hour minimum plus any actual time in excess of the minimum. It incorporates the actual time to conduct an inspection and the travel time to and from the inspection location.

(4) The Service will charge any overtime, including travel time, in excess of the minimum in quarter-hour increments of the hourly rate. The Service will round up an inspection time of 10 minutes or more beyond a quarter-hour increment to the next quarter-hour and will disregard any

time over a quarter-hour increment that is less than 10 minutes.

(5) The Service will charge only one overtime fee when multiple shipments are consigned to or are to be exported by the same importer or exporter and we inspect all at the same time at one location. The overtime fee will consist of one 2-hour minimum or the actual time for inspection of all the applicable shipments, whichever is greater. All applicable base and premium fees will apply to each shipment.

(6) We will charge 1 hour of time at 1½ times the hourly labor rate for inspections beginning less than 1 hour before normal working hours.

(7) We will charge a minimum of 2 hours of time at an hourly rate of 1½ times the average hourly labor rate for inspections outside normal working hours, except for inspections performed on a Federal holiday.

(8) We will charge a minimum of 2 hours of time at an hourly rate of 2 times the average hourly labor rate for inspections performed on a Federal holiday.

(h) *Fee schedule.*

Inspection fee schedule	Fee cost per shipment per year				
	2008	2009	2010	2011	2012 and beyond
(1) Designated port base inspection fee (see § 14.94 (c)).	\$85 .....	\$87 .....	\$89 .....	\$91 .....	\$93.
(2) Staffed nondesignated port base inspection fee (see § 14.94(d)).	\$133 .....	\$136 .....	\$139 .....	\$142 .....	\$145.
(3) Nonstaffed nondesignated port base inspection fee (see § 14.94(e)).	\$133 .....	\$136 .....	\$139 .....	\$142 .....	\$145.
(4) Premium inspection fee at any port (see § 14.94 (f)):					
(i) <i>Protected species.</i> Any species that requires a permit under parts 15, 16, 17, 18, 21, 22, or 23 of this chapter;	\$19 .....	\$37 .....	\$56 .....	\$74 .....	\$93.
(ii) <i>Live species.</i> Any live wildlife, including live viable eggs and live pupae.	\$19 .....	\$37 .....	\$56 .....	\$74 .....	\$93.
(5) Overtime inspection fee (see § 14.94(g)):					
(i) Inspections beginning less than 1 hour before normal work hours.	\$48 .....	\$49 .....	\$51 .....	\$52 .....	\$53.
(ii) Inspections after normal work hours, including Saturday and Sunday. (2 hour minimum charge plus fee for additional time).	\$96 min. + \$48/hr.	\$98 min. + \$49/hr.	\$101 min. + \$51/hr.	\$103 min. + \$52/hr.	\$105 min. + \$53/hr.
(iii) Inspections on Federal holidays. (2 hour minimum charge plus fee for additional time).	\$128 min. + \$64/hr.	\$131 min. + \$65/hr.	\$133 min. + \$67/hr.	\$136 min. + \$68/hr.	\$139 min. + \$70/hr.

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

(j) All base inspection fees, premium inspection fees, and overtime fees will apply regardless of whether or not a physical inspection of your wildlife shipment is performed, and no fees will

be prorated except as provided in paragraphs (e) and (g)(5) of this section.

(k) *Exemptions to inspection fees.*

(1) *Certain North American-origin wild mammal furs or skins.* Wildlife shipments that meet all of the following criteria are exempt from the designated port base inspection fee (however, these shipments are not exempt from the designated port overtime fees or the import/export license application fee):

(i) The wildlife is a raw fur; raw, salted, or crusted hide or skin; or a separate fur or skin part, lawfully taken from the wild in the United States, Canada, or Mexico that does not require permits under parts 17, 18, or 23 of this chapter; and

(ii) You, as the importer or exporter, or a member of your immediate family, such as your spouse, parents, siblings, and children, took the wildlife from the



wild and are shipping the wildlife between the United States and Canada or Mexico; and

(iii) You have not previously bought or sold the wildlife described in paragraph (k)(1)(i) of this section, and the shipment does not exceed 100 raw furs; raw, salted, or crusted hides or skins; or fur or skin parts; and

(iv) You certify on Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife, that your shipment meets all the criteria in this section.

(2) You do not have to pay base inspection fees, premium inspection fees, or overtime fees if you are importing or exporting wildlife that is exempt from import/export license requirements as defined in § 14.92(a) or you are importing or exporting wildlife as a government agency as defined in § 14.92(b)(1)(ii).

(3) You do not have to pay base inspection fees, premium inspection fees, or overtime fees if you are importing or exporting wildlife that meets the criteria for "domesticated animals" as defined in § 14.4.

Dated: October 16, 2008.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8-29070 Filed 12-8-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 061228342-7068-02]

RIN 0648-XM06

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2007-2009 Specifications

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

**ACTION:** Temporary rule; adjustment of 2008 and 2009 Atlantic herring (herring) area total allowable catches (TACs).

**SUMMARY:** NMFS restores 900 mt of unallocated research set-aside (RSA) to the 2008 and 2009 herring Area 2 TACs

and 1,800 mt of unallocated RSA to the 2008 and 2009 herring Area 3 TACs. The adjustments are intended to reallocate herring RSA quota to the herring commercial fishery.

**DATES:** Effective December 9, 2008, through December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The 2007-2009 herring specifications (72 FR 17807, April 10, 2007) allocated RSA to each of the four herring management areas for 2008-2009 as follows: 1,350 mt to Area 1A, 300 mt to Area 1B, 900 mt to Area 2, and 1,800 mt to Area 3. In early 2008, NMFS received four research proposals in response to the 2008/2009 Herring RSA Program request for proposals; NMFS's Northeast Fisheries Science Center selected one proposal to be funded through the 2008/2009 Herring RSA Program. The project, conducted by the Gulf of Maine Research Institute, entitled "The Effects of Fishing on Herring Aggregations," requested and was awarded all of the RSA for Areas 1A and 1B (1,350 mt and 300 mt, respectively), but did not request RSA for Areas 2 and 3 (900 mt and 1,800 mt, respectively).

The regulations at § 648.207 stipulate that, in the event that the approved research projects do not make use of any or all of the RSA, the unutilized portion of the RSA shall be reallocated back to its respective management area(s). When multi-year TACs are specified and there is unutilized herring RSA available, NMFS, at the request of the New England Fishery Management Council (Council), could publish another request for funding proposals (RFP) for either the second or third years of the 3-year specifications. The Council also may decide not to publish another RFP, in which case NMFS may release the unutilized portion of the set-aside back to its respective management area(s).

At its October 7-9, 2008, meeting, the Council discussed the unallocated 2008 and 2009 herring RSA in Areas 2 and 3. Because there willis not be insufficient time between October and the end of the 2008 fishing year and/or the start of the 2009 fishing year to publish another RFP, evaluate the proposals, and award RSA, the Council requested that NMFS release the unallocated RSA for Areas 2

and 3 back to its respective management areas, such that it would be available for harvest by the commercial fishery.

Therefore, this action restores 900 mt of herring to the Area 2 TAC and 1,800 mt of herring to the Area 3 TAC for the 2008 and 2009 fishing years. The resulting 2008 and 2009 herring TACs are 30,000 mt for Area 2, and 60,000 mt for Area 3.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action restores unallocated herring RSA to herring Management Areas 2 and 3 for the 2008 and 2009 fishing years, such that it is available for harvest by the commercial herring fishery. Regulations at § 648.207 stipulate that unutilized RSA shall be reallocated back to its respective management area(s). In October 2008, the Council requested that NMFS release the unallocated RSA to the commercial herring fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. Regulations at § 648.201(a) stipulate that NMFS shall prohibit vessels from possessing, catching, transferring, or landing herring from a management area when catch from that management area reaches 95 percent of its management area TAC. If implementation of this action is delayed to solicit public comment, the commercial herring fishery in Areas 2 and 3 may close prematurely in 2008, thereby undermining the economic objectives of the Atlantic Herring Fishery Management Plan. There was insufficient time to solicit prior public comment because of the timing of the Council's request that NMFS release the unallocated RSA quota to the commercial fishery. The AA further finds, pursuant to 5 U.S.C. 553(d)(3) good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: December 2, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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