

The interim final rule modified the procedures for submitting an advisory opinion request by deleting the requirements at § 1008.31(b) and 1008.36(b)(6) for an initial payment of \$250 for each advisory opinion request, and amending § 1008.31(b) to require that payment for an advisory opinion be made directly to the Treasury of the United States, as directed by OIG. In addition, we amended § 1008.43(d) to state that an advisory opinion will be issued following receipt by OIG of confirmation that payment in full has been remitted by the requesting party to the Department of Treasury, as directed by OIG. We also notified the public that, as of the effective date of the interim final rule, we no longer would accept checks or money orders from requesting parties and payments must be made directly to the United States Treasury through wire or other electronic funds transfer. We provided additional instructions to the public on our Web site ([www.oig.hhs.gov](http://www.oig.hhs.gov)) for paying fees owed for advisory opinions via wire or other electronic funds transfer.

### III. Regulatory Impact Statement

#### A. Administrative Procedure Act

The advisory opinion process is an established OIG program. This final rule is limited to modifying the processing of payments received for advisory opinion requests. It does not modify eligibility of a party to request an advisory opinion, nor does it modify the standards under which OIG will accept and/or analyze a request. OIG expects that this final rule will further the public's interest with minimal burden by confirming the interim final rule, which deleted the requirement for an initial payment of a deposit to be credited toward the final advisory opinion processing costs, and by requiring the use of electronic transfers of funds. This final rule will also provide greater efficiency in processing payments from requestors and will save staff time.

#### B. Regulatory Analysis

We have examined the impact of this final rule as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

Executive Order 12866 and Regulatory Flexibility Act

As discussed above, these regulations were published as an interim final rule on March 26, 2008. Because no notice of proposed rulemaking was required, the provisions of the RFA do not apply. Further, this document does not meet

the criteria for a significant regulatory action as specified in Executive Order 12866.

#### Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). We believe that this final rule will not impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of \$100 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

#### Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this final rule under the threshold criteria of Executive Order 13132, Federalism, we have determined that this final rule would not significantly limit the rights, roles, and responsibilities of State or local governments. We have determined, therefore, that a full analysis under Executive Order 13132 is not necessary.

#### C. Paperwork Reduction Act

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in rulemaking. This final rule will not impose any information collection burden or affect information currently collected by OIG.

Accordingly, the interim final rule amending 42 CFR chapter V, subchapter B, which was published in the **Federal Register** at 73 FR 15937 on March 26, 2008, is adopted as a final rule without change.

Dated: July 3, 2008.

**Daniel R. Levinson**,  
Inspector General.

Approved: July 3, 2008.

**Michael O. Leavitt**,  
Secretary.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 23

[FWS-R9-IA-2008-0003] [96000-1671-0000-P5]

RIN 1018-AV70

#### Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Import and Export of Sturgeon Caviar

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

**ACTION:** Direct final rule.

**SUMMARY:** We, the Fish and Wildlife Service (FWS), are amending certain provisions related to international trade in sturgeon caviar in the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We are reducing the quantity of caviar that may be imported or exported under the CITES personal effects exemption and amending the requirements for import of caviar from shared stocks subject to quotas. These changes are not controversial and will bring U.S. regulations in line with revisions adopted by consensus at the most recent meeting of the Conference of the Parties to CITES (June 2007). The revised regulations will help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade in sturgeon caviar.

**DATES:** This rule is effective September 15, 2008 without further action, unless adverse comment is received or postmarked on or before August 18, 2008. If we receive adverse comment, then we will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AV70; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the

**Public Comments** section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

**FOR FURTHER INFORMATION CONTACT:**

Robert R. Gabel, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203 (telephone, (703) 358-2093; fax, (703) 358-2280).

**SUPPLEMENTARY INFORMATION:**

**Background**

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after the required 10 countries had ratified it. Currently 172 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Section 8A of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES Appendices. The current U.S. CITES regulations took effect on September 24, 2007, and incorporate provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the thirteenth meeting (CoP13), which took place in 2004.

Article VII(3) of the Treaty provides for the import, export, or re-export of specimens that are personal or household effects (see the definitions in 50 CFR 23.5) without CITES documents under specific circumstances. For some species, including sturgeon and paddlefish (*Acipenseriformes*), the Parties have established limits on the quantity of certain specimens that may be transported as personal and household effects. At CoP14, in June 2007, the Parties agreed to reduce the quantity of sturgeon or paddlefish caviar that may be imported or exported under the personal effects exemption from 250 grams to 125 grams (see Resolution

Conf. 12.7 (Rev. CoP14) and Resolution Conf. 13.7 (Rev. CoP14)). This change was originally recommended by the International Sturgeon Enforcement Workshop to Combat Illegal Trade in Caviar (Brussels, 2006) and was endorsed by the United States and adopted by consensus at CoP14. We are amending 50 CFR 23.15(c)(3)(i) to incorporate this change.

The Parties also agreed to a new quota-setting process for caviar from shared stocks, including a change in the quota year so that it will coincide with the harvest season rather than the calendar year. Previously, under Resolution Conf. 12.7 (Rev. CoP13), "Conservation of and trade in sturgeons and paddlefish," caviar from shared stocks subject to quotas (i.e., the Black Sea, Caspian Sea, and Amur River basins) had to be exported by the end of the calendar year in which it was harvested and processed. At CoP14, the Parties agreed that, from 2008 onward, the quota year will begin on the first of March and end on the last day of February of the following year. Exports of caviar from shared stocks subject to quotas must take place during the quota year in which the caviar is harvested and processed.

In addition, the sturgeon resolution was amended to specifically state that quotas must not be detrimental to the survival of the species in the wild and to remove the requirement that the Secretariat must confirm that the quotas have been agreed to by all relevant countries (see Resolution Conf. 12.7 (Rev. CoP14)). These changes were adopted by consensus at CoP14. We are amending 50 CFR 23.71(d) to reflect the relevant changes to the quota-setting process for caviar from shared stocks.

We are publishing this rule without a prior proposal because this is a non-controversial action that, in the best interest of the regulated public, should be undertaken in as timely a manner as possible. The Parties agreed by consensus that these changes are appropriate for the conservation of the species and implementation of the Treaty. As a Party to CITES, the United States has the responsibility under Article II(4) to ensure that all trade is consistent with the Treaty, which includes aligning import, export, and re-export provisions in a timely manner as agreed by the Parties. Thus, we have good cause to find that standard notice and public comment procedures would be unnecessary and contrary to the public interest. The rule will be effective, as published in this document, on the effective date specified in the DATES section of this document, unless we receive significant adverse

comments on or before the comment due date specified in the DATES section of this document. Significant adverse comments are comments that provide strong justifications as to why the rule should not be adopted or why it should be changed.

If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. In the event that we do receive significant adverse comments, we will engage in the normal rulemaking process to promulgate these changes to 50 CFR part 23. Therefore, elsewhere in today's issue of the **Federal Register**, we have published a proposed rule regarding these regulatory changes. We will give the same consideration to comments submitted in response to either the direct final rule or the proposed rule; you do not need to submit separate comments for both documents.

**Required Determinations**

*Regulatory Planning and Review:* This is not a significant regulatory action under Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of \$100 million or more or adversely affect a part of the economy, productivity, jobs, the environment, or other units of government. This rule reduces the quantity of sturgeon or paddlefish caviar that an individual may import or export under the personal effects exemption (i.e., without a CITES document) from 250 grams to 125 grams. The personal effects exemption applies only to specimens for personal use that are hand-carried or checked as personal baggage on the same boat, plane, etc., as the traveler. This rule also informs the public of a change in the quota-setting process and timeframe for export of caviar from shared stocks (i.e., the Black Sea, Caspian Sea, and Amur River basins). Publication of this rule will assist U.S. businesses in complying with CITES requirements when engaging in international trade in sturgeon and paddlefish caviar.

We do not expect that this rule will have a significant effect on the volume or dollar value of sturgeon or paddlefish caviar imported, exported, or re-exported to and from the United States. There is no indication that this rule would result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial. An economic analysis is not necessary for this rule as it will not have an economic impact on large or small entities.

b. This rule will not create inconsistencies with other agencies' actions. As the lead agency for implementing CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues. As a Party to CITES, the United States is committed to fully and effectively implementing the Convention. All sturgeon and paddlefish (*Acipenseriformes*) are listed under CITES. This rule informs individuals and businesses of provisions adopted at the most recent CoP for international trade in sturgeon and paddlefish caviar.

*Regulatory Flexibility Act:* Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved with international caviar trade would be considered small as defined by the SBA. The declared value for U.S. international trade in sturgeon and paddlefish caviar was \$13.4 million in 2005 and \$13.7 million in 2006.

These new regulations create no substantial fee or paperwork changes in the permitting process. The regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public.

This rule benefits businesses engaged in international caviar trade by providing updated regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of CITES, which has been in effect in the United States since 1975.

We therefore certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

*Small Business Regulatory Enforcement Fairness Act:* This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. This rule provides the importing and exporting community in the United States with updated regulations implementing CITES. This rule will not have a negative effect on this part of the economy. This rule will affect all caviar importers, exporters, and re-exporters equally, and the benefits of having updated guidance on complying with CITES requirements will be evenly spread among all businesses, whether large or small. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule may result in a small increase in the number of applications for import/export of caviar for personal use. A CITES document is now required for any amount of caviar over 125g (a reduction from the 250g previously allowed without a permit).

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule will assist U.S. businesses and individuals traveling abroad in ensuring

that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

*Unfunded Mandates Reform Act:* Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this rule has no effect on small governments' responsibilities.

b. This rule will not produce a Federal requirement of \$100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings:* Under Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of CITES specimens. Import, export, and re-export of caviar in amounts greater than 125 grams will still be allowed with the appropriate CITES documents. The rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in conducting international trade in CITES specimens.

*Federalism:* These revisions to part 23 do not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

*Civil Justice Reform:* Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act:* This rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA): The FWS has determined that this direct final rule is categorically excluded from further NEPA review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures (69 FR 10866, March 8, 2004). No further documentation will be made.

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) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

Energy Supply, Distribution or Use: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. This rule revises the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. This rule will not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Clarity of this regulation: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Comments

We are seeking comments on whether the provisions in this direct final rule allow the affected public to effectively comply with CITES. You may submit your comments and materials concerning this rule by one of the methods listed in the ADDRESSES section. We will not accept comments sent by e-mail or fax or to an address not listed in the ADDRESSES section.

We will post your entire comment—including your personal identifying information—on http://www.regulations.gov. If you provide personal identifying information in your written comments you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on http://www.regulations.gov, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358-2093.

List of Subjects in 50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Imports, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

Regulation Promulgation

For the reasons given in the preamble, we amend title 50, chapter I, subchapter B of the CFR as follows:

PART 23—[AMENDED]

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

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

§ 23.15 [Amended]

- 2. Amend § 23.15(c)(3)(i), the first entry in the table, by removing the words "250 gm" in the Quantity column and by adding in their place the words "125 gm."
- 3. Amend § 23.71(d) by removing paragraph (d)(4) and revising paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

§ 23.71 How can I trade internationally in sturgeon caviar?

\* \* \* \* \*

(d) \* \* \*

(1) The relevant countries have established annual export quotas for the shared stocks that were derived from catch quotas agreed among the countries. The quotas are based on an appropriate regional conservation strategy and monitoring regime and are not detrimental to the survival of the species in the wild.

(2) The quotas have been communicated to the CITES Secretariat and the Secretariat has communicated the annual export quotas to CITES Parties.

(3) The caviar is exported during the quota year (March 1 – last day of February) in which it was harvested and processed.

\* \* \* \* \*

Dated: June 5, 2008

David M. Verhey

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E8-16195 Filed 7-16-08; 8:45 am]

BILLING CODE 4310-55-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717340-8451-02]

RIN 0648-XJ06

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Trimester II Fishery for Loligo Squid

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for Loligo squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, July 17, 2008. Vessels issued a Federal permit to harvest Loligo squid may not retain or land more than 2,500 lb (1,134 kg) of Loligo squid per trip for the remainder of the trimester (through August 31, 2008). This action is necessary to prevent the fishery from exceeding its Trimester II quota and to allow for effective management of this stock.

DATES: Effective 0001 hours, July 17, 2008, through 2400 hours, August 31, 2008.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978-281-9221, Fax 978-281-9135.