



April 25, 2008

Public Comments Processing
Attn: RIN 1018-AV31
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, Virginia 22203

Re: Docket No. FWS-R9-LE-2008-0024
Import/Export License and Fee Proposals

Dear Sirs:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) offers the following comments on the proposed amendments to the rules governing import/export licenses and fees that were published in the Federal Register on February 25, 2008 (73 FR 9972-9983).

The proposed change to 50 CFR 14.92 would redefine the import/export license exemption category from its current language of "*Shellfish and fishery products*" to "*Shellfish and nonliving fish products*". Based on the factsheet given in a public notice to the wildlife import/export community by the FWS on March 6, 2006, the FWS definition of "shellfish" was narrowed to the following:

"Shellfish are all species of oyster, clam, mussel, or scallop (Class Pelecypoda) or shrimp, crab, or lobster (Class Crustacea) that are live, shucked, or in the shell, fresh or frozen, whole or in part."

Serious questions have arisen from seafood importers in the northeast as to whether this definition of *shellfish* should also include wildlife species in the class Cephalopoda (squids, octopods, and cuttlefish). NMFS understanding is that organisms in this class *are* shellfish. According to the definition listed in the NMFS 2006 Glossary,

“Shellfish include both mollusks, such as clams, and crustaceans, such as lobsters.” This definition was sourced from the *United Nations Food and Agriculture Organization – Fisheries Glossary*. Shellfish are also further defined in 50 CFR 10.12 as “*an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean...*”

Although the Magnuson-Stevens Act provisions (50 CFR 600.10) and the Northeast Region regulations (50 CFR 648.2) lack a clear definition of shellfish, both definitions above indicate that the phylum Mollusca classifies all species within as *shellfish*, which includes the class Cephalopoda.

Based on the concerns we have identified, NMFS strongly recommends FWS provide clarification in this rule on the definition of *shellfish* to help those importing and exporting seafood better understand the import/export requirements of the FWS. Therefore, NMFS believes §14.92(a)(1) should read: “*Shellfish, as defined by 50 CFR 10.12, and nonliving fish 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;*”. NMFS encourages FWS to pursue further interagency and industry dialogue, and looks forward to working with FWS in advancing environmentally-sound import/export regulations.

Sincerely,



Samuel D. Rauch III
Deputy Assistant Administrator for
Regulatory Programs, NMFS