15 NCAC 2D .0532 Sources Contributing to an Ambient Violation

North Carolina amended this rule to correct a cross-reference. This rule is also amended to specify that the version of the referenced CFR is that of January 1, 1989, and does not include any subsequent amendments.

15 NCAC 2H .0603 Application

North Carolina amended this rule to correct the mailing address of the Division of Environmental Management.

15 NCAC 2H .0609, Permit Fees

North Carolina amended this rule to correct the Department name.

Final Action

In this document, EPA is approving the revisions to the North Carolina Environmental Management regulations listed above. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on October 14, 1994. However, if adverse or critical comments are received by September 14, 1994, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action. The second document will finalize the action and address the comments.

Under section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: June 9, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(71) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(71) The PSD NOx increment regulations and other miscellaneous revisions to the North Carolina State Implementation Plan which were submitted on March 3, 1993.

(i) Incorporation by reference.

(A) North Carolina regulations 15 NCAC 2D.0103, 2D.0104, 2D.0401, 2D.0521, 2D.0530, 2D.0531, 2D.0532, 2H.0603, 2H.0607, and 2H.0609 effective on December 1, 1992.

(ii) Other material. None.

[FR Doc. 94–19843 Filed 8–12–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[WI39–02–6384; FRL–4894–2]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving a revision to Wisconsin's State Implementation Plan (SIP) for ozone. On September 22, 1993, and January 14, 1994, the Wisconsin Department of Natural Resources (WDNR) submitted volatile organic compound (VOC) rules to the USEPA as a proposed revision to Wisconsin's ozone SIP. These rules replace the Chapter NR 154 (154 series) regulations currently contained in Wisconsin's federally approved ozone SIP with Chapter NR 400 (400 series) regulations which are consistent with the current Wisconsin Administrative Code. In addition to renumbering Wisconsin's VOC regulations, this revision addresses the following: the requirement of Wisconsin's March 9, 1984 SIP that the State submit major source non-control technology guideline (non-CTG) reasonably available control technology (RACT) regulations; the USEPA's SIP call of May 26, 1988; the requirement of the Clean Air Act as amended in 1990 (Act) that States correct deficient VOC RACT rules ("fix-up" requirement); and the requirement of the Act that States adopt VOC RACT rules where not previously required ("catch-up" requirement). Further, this revision redefines RACT for non-vapor

conveyorized degreasers, high performance architectural coatings, and fire truck and emergency response vehicle manufacturing.

EFFECTIVE DATE: This final rule is effective September 14, 1994.

ADDRESSES: Copies of the SIP revision request and the USEPA's analysis are available for inspection at the following location: (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: On February 25, 1994 (59 FR 9158), the USEPA published a document proposing approval of revisions to the Wisconsin SIP for ozone which were submitted for parallel processing on September 22, 1993. On January 14, 1994, the State submitted final rules to replace the portions of the September 22, 1993, submittal which were not yet fully effective. Today the USEPA is taking final action to approve these revisions.

Background

On September 22, 1993, Wisconsin submitted VOC rules to the USEPA as a proposed revision to the State's ozone SIP. The proposed revision was submitted to the USEPA for parallel processing because portions of the rules had been adopted by the WDNR's Natural Resources Board, but were not as yet fully effective at the State level. On January 14, 1994, the State submitted fully effective rules to complete the September 22, 1993, submittal.

These rules replace the 154 series regulations currently contained in Wisconsin's ozone SIP with 400 series regulations which are consistent with the current Wisconsin Administrative Code. More specifically, the September 22, 1993, submission consists of Chapters NR 400, 419 to 425 (excluding NR 419.07), 439 and 484, as related to VOCs. This includes Order AM–36–92, which contains VOC rule revisions adopted by the State of Wisconsin's Natural Resources Board on July 29, 1993. In addition to renumbering Wisconsin's VOC regulations, this revision fully addresses the following: the requirement of Wisconsin's March 9, 1984 SIP that the State submit major source non-CTG RACT regulations; the USEPA's SIP call of May 26, 1988; and the RACT fix-up requirement of section 182(a)(2)(A) of the Act. Additionally, this submittal expands the geographic coverage of Wisconsin's VOC RACT rules (where this has not already been done) to Door, Kewaunee, Manitowoc, and Washington Counties and lowers the applicability cutpoint for existing major non-CTG regulations to 25 tons per year (tpy) of VOC for sources located in the Milwaukee area.[1] In doing so, these rules partially address the RACT catch-up requirement of section 182(b)(2) of the Act. The catch-up requirement will be fully addressed when the Wisconsin submits its rules for major non-CTG sources, currently expected in 1994. Further, this revision redefines RACT for non-vapor conveyorized degreasers, high performance architectural coatings, and fire truck and emergency response vehicle manufacturing. A detailed discussion of the background for the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPR) cited above.

The USEPA has evaluated all of Wisconsin's rules, as submitted on September 22, 1993, and January 14, 1994, for consistency with the requirements of the Act, USEPA regulations and the USEPA's interpretation of these requirements as expressed in the various USEPA policy documents referenced in the NPR. The USEPA has found that the rules meet the requirements applicable to ozone and is, therefore, approving the rules for incorporation into the State's ozone SIP.[2] A detailed discussion of the rule provisions and evaluations has been provided in the NPR and in technical support documents available at the USEPA's Region 5 office.

Public Comments

A 30-day public comment period was provided in the NPR. The USEPA received no comments on the proposed action.

USEPA Action

The USEPA is today approving the above-referenced rules into Wisconsin's ozone SIP as fully meeting the following: the requirement of Wisconsin's March 9, 1984 SIP that the State submit major source non-CTG RACT regulations; the USEPA's SIP call of May 26, 1988; and the RACT fix-up requirement of section 182(a)(2)(A) of the Act. Additionally, the USEPA is proposing to approve these rules as meeting part of the RACT catch-up requirements of section 182(b)(2) of the Act.

Regulatory Process

This action makes final the action proposed at 59 FR 9158. As noted elsewhere in this document, USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to a Table 3 under the processing procedures established at 54 FR 2214, January 19 1989.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Implementation Plan approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 14, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

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[1] Under the 1990 amendments, major sources in severe areas are defined as those with the potential to emit 25 tpy or more of VOCs. This revision ensures that the definition of major source contained in the amendments is reflected in existing major non-CTG regulations.

[2] The USEPA is approving rules NR 421.03, NR 421.04, NR 422.09, NR 422.155 into the SIP for their strengthening effect, but not as meeting RACT.

enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 11, 1994.

Michelle D. Jordan,

Acting Regional Administrator.

40 CFR part 52, Subpart YY, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(73) to read as follows:

§52.2570 Identification of plan.

* * * * *

(c) * * *

(73) Revisions to the ozone State Implementation Plan (SIP) were submitted by the Wisconsin Department of Natural Resources on September 22, 1993, and January 14, 1994. These rules replace the 154 series stationary source VOC regulations previously contained in Wisconsin's ozone SIP with 400 series regulations which are consistent with the current Wisconsin Administrative Code. These rules are only being approved as they apply to the ozone SIP.

(i) Incorporation by reference. The following chapters of the Wisconsin Administrative Code are incorporated by reference.

(A) Chapter NR 400: Air Pollution Control Definitions.

(B) Chapter NR 419: Control of Organic Compound Emissions, except for NR 419.07.

(C) Chapter NR 420: Control of Organic Compound Emissions from Petroleum and Gasoline Sources.

(D) Chapter NR 421: Control of Organic Compound Emissions from Chemical, Coatings and Rubber Products Manufacturing.

(E) Chapter NR 422: Control of Organic Compound Emissions from Surface Coating, Printing and Asphalt Surfacing Operations.

(F) Chapter NR 423: Control of Organic Compound Emissions from Solvent Cleaning Operations.

(G) Chapter NR 424: Control of Organic Compound Emissions from Process Lines.

(H) Chapter NR 425: Compliance Schedules, Exceptions, Registration and Deferrals for Organic Compound Emission Sources in CHS. NR 419 to 424.

(I) Chapter NR 439: Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements.

(J) Chapter NR 484: Incorporation by Reference.

[FR Doc. 94–19842 Filed 8–12–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–128, RM–6655, RM–6996]

Radio Broadcasting Services; Dublin and Marlin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document rescinds the allotment of Channel 225C3 at Dublin, Texas, and allots Channel 226C3 instead. This document also allots Channel 225C2 to Marlin in lieu of Channel 225A and modifies the license of Station KEYR to specify operation on Channel 225C2, Marlin, Texas. The allotment of channel 226C3 to Dublin, Texas, will provide that community with its first aural transmission service. Channel 226C3 can be allotted to Dublin in compliance with the Commission's minimum distance separation requirements of the Rules, with a site restriction of 22.4 kilometers (13.9 miles northwest of the community. The coordinates for Channel 226C3 at Dublin are 32–15–21 and 98–28–09. Channel 225C2 can be allotted to Marlin in compliance with the Commission's minimum distance separation requirements at coordinates of 31–22–48 and 97–09–42. With this action, this proceeding is terminated.

EFFECTIVE DATE: Sept. 26, 1994.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 89–128, adopted August 3, 1994, and released Aug. 10, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 225C3 at Dublin and adding Channel 226C3 at Dublin and by removing Channel 225A at Marlin and adding Channel 225C2 at Marlin.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–19863 Filed 8–12–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB61

Live Farm-Raised Fish; Exemption From Fish and Wildlife Export Requirements Except for Marking Requirements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service exempts live farm-raised fish and farm-raised fish eggs from Service export requirements except for marking requirements. This action exempts exporters of live farm-raised fish and farm-raised fish eggs from import/export license requirements, designated port requirements and payment of user fees.

EFFECTIVE DATE: This rule is effective on August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Frank S. Shoemaker, Special Agent in Charge, Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

Only July 9, 1992, (57 FR 30459) the Service published a proposed rule exempting live farm-raised fish and farm-raised fish eggs from fish and wildlife export requirements except for marking requirements. Current regulations (50 CFR Sections 14.21, 14.55, 14.64 and 14.92) exempt shellfish and fisheries products imported or exported for human or animal consumption from Service import and export requirements. This exemption is based on language in the Endangered Species Act of 1973 (16 U.S.C. 1538) (Act) that authorizes the Secretary to prescribe necessary and appropriate regulations. This action does not relieve the Service of any responsibilities for the enforcement of provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Any species of live farm-raised fish or fish eggs listed in Appendix I, II, or III, and expected from the United States would remain subject to all regulations governing such exports.

After reviewing inspection situations involving the import and export of live farm-raised fish and farm-raised fish eggs, the Secretary has determined that the interests of the Act and CITES are best served by concentrating the inspection efforts of the Service on those fish imports or exports which are endangered or threatened. Section 1538(d) requires anyone engaging in the business of importing or exporting fish or wildlife to obtain permission from the Secretary to do so. Under this final rule, exports of live farm-raised fish and farm-raised fish eggs which are not classified as endangered or threatened under the Act or are not listed under CITES, would be required to be marked according to contents, but would be otherwise permitted as exempted from Service export regulations. Exporters of live farm-raised fish and farm-raised fish eggs would not be required to obtain a license to export their live farm-raised fish and farm-raised fish eggs from the United States.

Under Section 1538(f), the Secretary may permit the importation or exportation of wildlife at non-designated ports and under such term as may be prescribed may permit both importation or exportation for other reasons, if in the Secretary's discretion, it is deemed appropriate and consistent with the Act. The Secretary views this exemption, as it pertains to live farm-raised fish and farm-raised fish eggs, as a means to concentrate Service enforcement efforts on species directly covered by the Act, including CITES. It also affords Service managers additional flexibility to direct wildlife inspection efforts where they are most needed. The costs to both the Service and fish farmers for export inspection of live farm-raised fish and farm-raised fish eggs that are non-endangered, non-threatened, non-CITES, and are raised for consumptive purposes (such as catfish) or ornamental purposes (such as guppies), outweigh any benefits that might be accrued by such inspection. Continued deployment of limited wildlife inspection services to the export of captive-bred live farm-raised fish and farm-raised fish eggs in an inefficient means of enforcing the Act when shipments of fish containing endangered, threatened, or CITES species needing inspection may be by-passed by Service personnel. Also, this action does not preclude the Service from conducting any inspection of a fish shipment where it is believed endangered, threatened or CITES species may occur, no does it relieve any exporter of live farm-raised fish or farm-raised fish eggs from meeting provisions of the Act, CITIES or any other regulations or directive issued by the Service.

Since June 11, 1992, when Director's Order No. 48, Export of Live Farm-Raised Fish and Farm-Raised Fish Eggs was issued, the Service has determined that the exemption of live farm-raised fish and farm-raised fish eggs from Service export requirements has not significantly increased the risk that illegally taken wild fish are being exported as farm-raised. Nor have the effects of this order been detrimental to Service's fisheries management or law enforcement programs. However, concerns about the possible introduction of injurious species into this country's wild fisheries will require that the Service continue to enforce its regulations relating to the import of all fish and fish eggs.

Results of Written Comments

A total of 12 written comments were received by the Service during the comment period. Three expressed enforcement concerns, two related to the inclusion of shellfish in the rule change, one opposed the rule change, one requested information and five supported the rule change unconditionally.

Of the three comments regarding enforcement issues, the most specific concern was one relating to the illegal export of paddlefish eggs. The commenter was concerned that exempting live farm-raised fish and farm-raised fish eggs from license and export inspection requirements might exacerbate an existing problem regarding the illegal harvest of paddlefish eggs sold as caviar. "We * * * have no means (export documents or reports) to determine that the fish or fish eggs leaving the State are legally-taken wild fish or farm raised." The second enforcement commenter related concerns regarding the applicability of the exemption in a foreign country, determination of ultimate utilization of the product, the possible re-export of wild-caught tropical fish, limitations on the Service's ability to inspect due to the rule change, illegal exports of wild-caught illegally taken fish from Pacific territories, the mixing of wild-caught and captive-raised specimens, verification of captive-produced fish by hobbyists, and the question of shellfish raised in seeded beds as qualifying as bred-in-captivity. The commenter stated: "* * * unscrupulous tropical fish exporters could claim the exemption with only a few fish tanks in the basement." The commenter proposed not exempting live tropical aquarium fish, including live shellfish within the ruling, excluding re-exports and applying the exemption only to live products. The third enforcement commenter expressed concern about exports of live farm-raised fish containing other wildlife and that the rule change would provide "little deterrence to laundering wild-caught fish."

The Service is concerned about any potential impact of this rule on the wild fish resource and the ability of law enforcement agencies to protect the resource. The Service believes that the increased illegal take and export of wild-caught paddlefish is primarily an economic phenomenon resulting from the diminished supply of caviar exported from States formerly comprising the Soviet Union. The Service does not believe that this situation would be relieved by abandoning this rule.

A more effective means of addressing the problem of illegal take of paddlfish may lie in reviewing current regulatory approaches and enforcement strategies, developing more effective means of monitoring paddlefish resources and establishing closer liaison with the Service's Division of Law Enforcement in instances where Federal laws such as the Lacey Act apply.

Regarding the second set of enforcement concerns, it is true that the unscrupulous exporter of tropical fish can claim a bred-in-captivity status for any export of tropical fish. However, the Service has not relinquished any importation inspection authority. Since nearly all tropical fish in the United States have either been captive-bred or imported, additional inspection at the time of export is duplicative and would render no benefit to the resource. Neither can the Service propose to define every category of exempt utilizations of live farm-raised fish. While it is true that Service export inspection options become somewhat more limited under this rule in instances where live farm-raised fish exports might contain illegal wildlife or even fish that are wild-caught, the Service cannot penalize or delay legitimate exports on unfounded suspicion. Nor can it penalize legitimate exporters of exotic or tropical fish because producers or hobbyists may be unregulated by States.

On June 11, 1992, Director's Order No. 48, Export of Live Farm-Raised Fish and Farm-Raised Fish Eggs was issued. This order expanded the exemption from import/export requirements of 50 CFR 14.21 (for shellfish and fisheries products imported or exported for human or animal consumption) to the export of live farm-raised fish and farm-raised fish eggs. Since the issuance of this directive, no significant increase in illegally taken wild fish re-exported as live farm-raised fish has been reported. Also, nothing in this rule prevents law enforcement authorities from enforcing existing laws regarding illegal importation or exportation or using existing law enforcement techniques in conducting investigations of commercial laundering of fish or other wildlife.

The Service recognizes that like other segments of the animal trade industry, certain individuals may not wish to invest in breeding operations with respect to wild-caught fish species currently imported and re-exported for sale. Such exports of wild-caught fish, if undeclared, remain illegal and are subject to investigation. The commenter also cited aquarium fish exported from the Pacific territories as a specific concern because the wild-caught population is "bound" to be caught by destructive means. Fish taken by such means may be laundered as captive-bred wildlife, speculated the commenter. As in the case of illegal paddlefish exportations, the Service believes this is a situation that must first be addressed by local authorities. Service inspection of shipments containing such illegally taken fish will diminish but not eliminate a root cause, which is the lack of internal controls at the territorial level. This commenter also stated that shellfish should be included in the Final Rule even if they do not meet the current definition of "bred in captivity" and "captivity" under 50 CFR Part 17.

In addition to better utilization of Service personnel resources and to more effectively enforce the Act, the Service is able through this action to address the economic needs of an important industry which farm raises fin fish and their eggs and to simplify the export of a product which is not taken from a wild resource under the jurisdiction of the Service. Under the provisions of 50 CFR 14.64(a), shellfish and fishery products for human or animal consumption are exempt from Service export declaration requirements. The Service recognizes that those who export shellfish specifically for purposes of human consumption frequently export these products in their immature forms, which complete their growth abroad before being sold for human consumption. Exporters of this class of shellfish are frequently required to meet wildlife export regulations because shellfish, such as clam "spat", are not directly consumed by animals or humans but are exported for transplantation prior to such consumption. The Service determined from the comments it received that this issue is of significant concern and that it is most appropriate to address this issue by reviewing the provisions of 50 CFR 14.21 in a forthcoming proposed rule which covers a broader range of importation and exportation procedures.

Another commenter was disconcerted because no supporting documentation for the Service's proposed actions regarding the lifting of inspection requirements of live farm-raised fish or farm-raised fish eggs exports was offered. (This concern was also raised as the sole comment in another letter.) The commenter concluded that this was because the Service's decision regarding the non-inspection of live farm-raised fish or farm-raised fish eggs exports was "biologically unsound" and ". . that the export of live fish and fish eggs should be monitored more intensively rather than removing virtually all monitoring activity."

The commenter cited the Canadian Journal of Fisheries and Aquaculture Sciences, Volume 48 (Supplement No. 1), 1991, containing a series of papers on "The Ecological and Genetic Implications of Fish Introductions." The commenter also stated that the Service violated both the requirements of, and the spirit of E.O. 11987, by encouraging the export of species that would be exotic to receiving ecosystems.

The commenter cited instances of international fish disease introductions in Japan, Russia and several European countries. Such introductions, the commenter stated, amount to "* * * a solid scientific argument that the export of live fish and fish eggs should be monitored more intensely rather than removing virtually all monitoring activity." The commenter suggested that a user-fee program be set up so that live farm-raised fish and farm-raised fish eggs could be certified as pathogen and parasite free. Also, the commenter requested that a formal Environmental Impact Statement (EIS) be prepared on the proposed rule and stated that the exclusion of this rule from an EIS was a "perversion" of the National Environmental Policy Act (NEPA).

The Service recognizes that introductions can, and sometimes do, have the impacts cited by the commenter. The Service, like the commenter, recognizes that the accidental introduction of pathogens can and have caused serious problems for ecosystems. The history and results of accidental and damaging pathogen introductions are of concern to the Service. Consistent with the awareness of the problems such introductions may have, it is also important to consider that not all pathogens discovered in a new location have necessarily been new introductions. The limits of so-called natural, native range of bacterial pathogens is not entirely known. The commenter listed several diseases as examples of harmful pathogens having been introduced by fish from one ecosystem to another. One disease cited by the commenter as an introduced pathogen was Bacterial Kidney Disease. This disease is not now believed to have been an introduction caused by non-native fish but may well have been circumpolar in range long before it was identified. Also, another disease mentioned by the commenter, *Ichthyophthirius multifiliis*, is believed to have been a world wide pathogen before it too, was identified.

To assert that the vast majority of all pathogens are human introductions to a virgin ecosystem is to view solely one frame of a film of biological history while ignoring introductions occurring in previous frames of the same film. The Service must consider the fact that it has jurisdiction only with respect to U.S. fish resources. It cannot constrain legal trade to protect the resources of other nations from a presumptive belief that the export of farm-raised fish products damages foreign ecosystem. Also, the receiving ecosystems are normally fish farms, laboratories or even fish markets. This class of receiving ecosystems are low risk in terms of potential pathogen spread and most likely to be highly subject to government regulators abroad. The implicit assumption that exported fish will be stocked in the wild is rarely the case.

The five letters comprising the balance of comments received were supportive of the Service's exempting live farm-raised fish and farm-raised fish eggs from export requirements except for marking. One representative of the aquaculture industry, while supportive, complained that the Service's definition of aquaculture was outdated because it did not encompass shellfish, aquatic plants and other farm-raised aquatic organisms. Another commenter representing some 340 members of a tropical fish farm association stated that this rule would enable tropical fish producers to gain a larger market share from foreign competitors. Another commenter stated that the Service's action in this rule making would have no adverse action on wild fishery resources but may have positive benefits to exporters of farm-raised fishery products in that State. The aquaculture development program manager of one State said that "export trade in these areas . . . could be grown substantially is regulatory constraints which impact profit margin are reduced or eliminated." The commissioner of Agriculture for another State explained that the removal of live farm-raised fish and farm-raised fish eggs from Service export requirements except for marking was of immeasurable benefit to an industry in which sales of the previous year totaled $32.8 million. The commenter stated that a major hindrance to the expansion of tropical fish exports has been lack of access to international airports with Service inspectors. The Service originally intended that this rule cover only live farm-raised fish and farm-raised fish eggs. Captive-raised amphibians mentioned by a commenter have not been considered. The intent of these regulatory changes is to reduce the regulatory burden and resulting negative economic impacts imposed on a farm industry or any industry that exports live farm-raised fish and farm-raised fish eggs, which are not removed from wild fish resources. The Service also believes it has the responsibility to provide the public with relief from regulations which are burdensome and do not serve their intended purpose. In this case, the Service has concluded that little if any benefit is accrued to endangered, threatened or CITES species or native species by continued treatment of exports of life farm-raised fish and farm-raised fish eggs as a wild resource.

Required Determinations

This final rule was not subject to Office of Management and Budget review under Executive Order 12866. This rule will not have a significant effect on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action is not expected to have any significant takings implications, as per Executive Order 12630. This rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This action does not contain any federalism impacts as described in Executive Order 12612. The changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Departmental Manual and an Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service office in Arlington, Virginia. A determination has been made pursuant to Section 7 of the Endangered Species Act that the revision of Part 14 will not affect federally listed species.

Author

The primary author of this rule is Special Agent Marcia Cronan, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

List of Subjects in 50 CFR Part 14

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

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the code of Federal Regulations, is amended as follows:

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. 705, 712, 1382, 1538(d)-(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 483(a).

2. Section 14.3 is added to read as follows:

§ 14.3 Information collection requirements.

The information collection requirements contained within this Part 14 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned a Clearance Number 1018–0012. This information is being collected to provide information about wildlife imports or exports, including products and parts, and will be used to facilitate enforcement of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*) and to carry out the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Public reporting burden for this form is estimated to vary from 10 to 15 minutes per response. Direct comments regarding the burden estimate or any other aspect of this form to the Service Information Collection Clearance Office, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, and the Interior Desk Officer, Office of Management and Budget, Washington, D.C. 20503.

3. Section 14.23 is added to read as follows:

§ 14.23 Live farm-raised fish and farm-raised fish eggs.

Live farm-raised fish and farm-raised fish eggs meet the definition of "bred in captivity" as stated in 50 CFR 17.3. Except for wildlife requiring a permit pursuant to Parts 17 or 23 of this subchapter, live farm-raised fish and farm-raised fish eggs may be exported from any U.S. Customs port.

4. Section 14.64 is amended by adding paragraph (c) to read as follows:

§ 14.64 Exceptions to export declaration requirements.

* * * * *

(c) Except for wildlife requiring a period pursuant to parts 17 or 23 of this subchapter, a Declaration for the Importation or Exportation of Fish or Wildlife (Form 3–177) does not have to be filed for the exportation of live farm-raised fish and farm-raised fish eggs as defined in § 14.23.

§ 14.92 [Amended]

5. Section 14.92(a)(2) is amended by removing the last word "and".

6. Section 14.92(a)(3) is amended by removing the period and adding in its place the word "and" preceded by a semicolon.

7. Section 14.92(a)(4) is added to read as follows:

§ 14.92 Exceptions to license requirement.

(a) * * *

* * * * *

(4) live farm-raised fish and farm-raised fish eggs of species not requiring a permit under Parts 17 or 23 of this subchapter B which are being exported.

* * * * *

Dated: June 10, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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