



CALIFORNIA WETFISH PRODUCERS ASSOCIATION

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August 6, 2020

Mr. Marc Gorelnik, Chair
And Members of the Pacific Fishery Management Council
7700 NE Ambassador Place #200
Portland OR 97220-1384

RE: Agenda Item C.2 ~ Request for Inclusion of a Squid Species Export Exemption in the Council's Deliberations on Regulatory Reforms Pursuant to the Executive Order (EO) 13921 Promoting American Seafood Competitiveness and Economic Growth

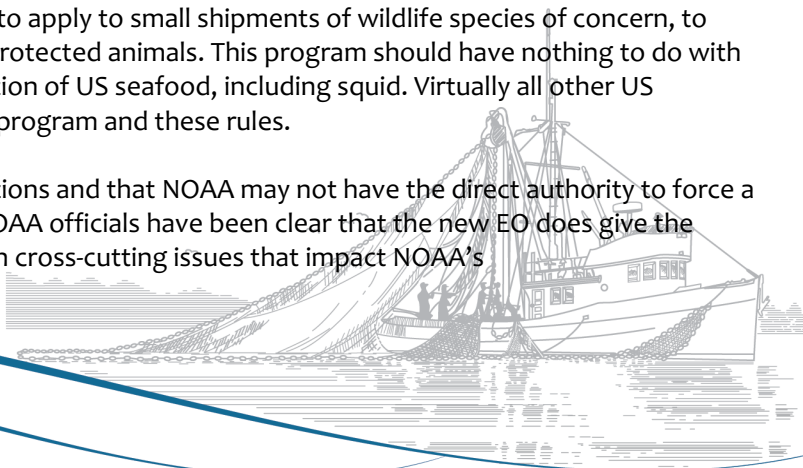
Dear Mr. Gorelnik and Council Members,

We learned during the May 27-28 meeting of the Regional Fishery Management Councils' Council Coordinating Committee that NMFS plans to survey the Councils to gather ideas to reduce regulatory barriers negatively affecting American seafood competitiveness, consistent with EO 13921. Discussion regarding the EO at the June Council meeting led to the Council's decision to schedule this topic for further discussion in September, to solicit ideas ahead of the NMFS survey. We appreciate the Council's consideration of the following request, which CWPA is submitting on behalf of California market squid fishery participants.

We are asking the Council to please support a recommendation to reform a squid fishery regulatory issue that is national in scope – involving market squid (*D. opalescens*) on the west coast and long-and shortfin squid (*Loligo and Illlex spp.*) on the east coast – that is causing serious negative economic and competitive impacts on our businesses. The issue is directly related to the inclusion of squid fishery products in the U.S. Fish & Wildlife Service's (USFWS) inspection and user fee system for monitoring the import/export of certain types of wildlife products (at 50 CFR 14). This policy and associated regulations require squid producers to ship U.S. squid only from designated ports, and to pay onerous inspection fees, paperwork fees, and license fees, etc., for a redundant and unnecessary service.

The USFWS regulations in question were intended to apply to small shipments of wildlife species of concern, to prevent abuse through the unauthorized trade in protected animals. This program should have nothing to do with the legitimate commercial production and distribution of US seafood, including squid. Virtually all other US commercial fishery products are exempt from this program and these rules.

We understand this issue has joint agency ramifications and that NOAA may not have the direct authority to force a sister agency to adjust its regulations. However, NOAA officials have been clear that the new EO does give the Agency the authority to make recommendations on cross-cutting issues that impact NOAA's



commercial fishing industry stakeholders. This issue of duplicative squid inspections, within the exclusive jurisdiction of the USFWS, is an example of where we need Council and NOAA assistance in making this recommendation for reform to the Administration.

The USFWS's current policy and associated regulations, which include squid products in an import/export monitoring program created to protect rare and endangered wildlife, negatively impact small U.S.-owned businesses, render U.S. squid exports less competitive in the international market, and thereby exacerbate the annual \$16B seafood trade deficit (much of it with China and other Asian countries), while providing zero environmental benefit to the U.S. Furthermore, the USFWS's role in seafood inspection duplicates existing precautionary processes and provides no benefit to fishing companies or U.S. consumers.

Our repeated requests to the USFWS to exempt squid as either a shellfish (i.e. mollusk) or a fishery product, and to provide relief to all our U.S. domestic squid fisheries, have long been ignored. The USFWS has clear authority to grant exemptions for shellfish and fishery products, and has done so for virtually all other seafood, but has refused to do so in the case of squid.

The Agency has never given a justifiable reason for its position, other than to say they can interpret the statute and form policy decisions in any manner they so choose (and require fees to be paid to support those decisions). The USFWS has likewise ignored comments from NMFS in the past, when NMFS attempted to correct the USFWS's false assumption that squid does not meet the definition of 'shellfish' or 'fishery product'.

Now, working with NOAA and the Administration, the Councils have a golden opportunity to make a substantial difference for our industry: squid producers on both coasts are asking the PFMC and MAFMC to help by elevating this issue with NMFS and again pressing the USFWS to make the logical and reasonable change to their user fee system by exempting U.S. squid products from the USFWS user fee and inspection program. This help is consistent with the provisions of EO 13921.

We believe our request for an exemption from the user fee system through the EO 13921 lens is warranted, to eliminate the negative impacts to industry from USFWS overregulation and the Agency's redundant seafood inspection requirements for harmless edible shellfish and fishery products. In our opinion, the USFWS has placed an unnecessary economic and regulatory burden on numerous small U.S. businesses for no justifiable benefit, environmental or otherwise.

Fishing Industry Request to the PFMC

We believe the PFMC should recommend to NOAA and to the Administration that the USFWS revise its wildlife import/export rules (See 73 FR 74615 and 50 CFR Parts 10-14) to exempt U.S. squid species pursuant to the President's Executive Order.

Clearly, these wholesome food products should be defined correctly either as "shellfish" or "fishery products" (or both) and thus be exempted from the system at 50 CFR Parts 10-14. All U.S. squid *fisheries* are managed by the PFMC/MAFMC/NMFS under the MSA, our nation's premier *fisheries management* law, as components of federal *fisheries management* plans. California's squid *fishery* is also actively managed by the CA Department of Fish and Wildlife. Thus, the Administration should amend its policy and properly define squid as a "fishery product," and require the USFWS to provide an exemption from the wildlife inspection user fee system.

A Brief Chronology of the Issue

Prior to the Final Rule of December 2008, U.S. squid seafood products were exempt from the USFWS requirements and inspection fees. During the 2008 rulemaking process, the USFWS received comments from the commercial fishing industry and the National Marine Fisheries Service (NMFS), both of whom opposed the USFWS' definition of "shellfish" as inconsistent with that of NMFS and the United Nations Food and Agriculture Organization (FAO).

Frankly, all the evidence we have indicates that squid are considered to be both mollusks and fishery products by scientists and the lead federal agency responsible for managing fisheries and seafood resources. In fact, this view is held by pretty much everyone except the USFWS.

At that time, NMFS requested the USFWS to revise its definition of shellfish to include squid, to be consistent with that of NMFS, the lead federal fisheries management agency. This revision could have provided relief to industry in terms of an exemption from the USFWS inspection fee system (e.g. permissible for certain shellfish & fishery products).

Ultimately, the USFWS did not agree with NMFS; did not alter its erroneous definition of shellfish; nor did it choose to consider squid products to be fishery products.

There is additional history to consider: In 2008, Congressman Henry Brown (R-SC), at that time the Ranking Member on the House Natural Resources Committee, Subcommittee on Fisheries, Wildlife and Oceans, submitted comments to the USFWS calling into question the lack of justification for the Agency to engage in seafood inspection by revising their import/export license requirements at 50 CFR 14.

It was not until 2012-13 that the Obama Administration began to aggressively enforce these regulations, due in part to what appears to be an effort by the USFWS to offset the fiscal impacts of budget sequestration at that time.

In October 2014, the House Natural Resources Chairman Doc Hastings (R-WA) raised similar issues in a letter to then Interior Secretary Sally Jewel, to which he received a rather lukewarm response (on December 22, 2014), essentially indicating the USFWS was entirely comfortable with their interpretation of the definition of shellfish and their enforcement of the 2008 Final Rule.

On January 22, 2016, the House Natural Resources Subcommittee on Water, Power and Oceans held a hearing on USFWS licensing requirements. The Subcommittee heard testimony from NOAA/NMFS officials that our domestic squid fisheries were healthy, sustainably-managed seafood products that were not a threat to the environment; while the USFWS representative, Mr. William Woody, stated the agency has broad authority to interpret the definition of shellfish and fishery products in any manner they choose.

On June 22, 2017, three coastal Republican Members of Congress sent a joint letter to then Secretary Zinke requesting a review of the USFWS regulations and to rescind the current fee system regime. To date, we have not seen any helpful signs from the Agency.

We believe both the President's EO 13771 and EO 13921 provide a legitimate opportunity for the Federal Government to reexamine this situation. We appreciate the possibility that the Council could now provide us with an opportunity to regain momentum on this issue by including it in your response to the NMFS' solicitation of issues negatively affecting American seafood competitiveness.

Clearly, California market squid, now recognized as a "best choice" on the Monterey Bay Aquarium Seafood Watch List, and longfin and shortfin squid on the East Coast, both MSC certified squid products, pose no threat to the environment, despite the fact that the USFWS user fee and monitoring system treats them in a manner similar to a CITES, ESA, or Lacey Act-listed species of concern. These squid species (and products made thereof) are not listed as injurious under 50 CFR part 16; they are not ESA-listed or candidates for listing (part 17); nor are they a CITES species (part 23). These are not considered to be aquatic invasive species nor are they a threat to the U.S. environment in any way -- so the justification for inclusion in the USFWS declaration process for fish and wildlife defies common sense.

The specific domestic fisheries being directly harmed by the USFWS' policies and associated regulations are:

California Market Squid (*D. opalescens*)

Harvest season: April 1 through March 31, or attainment of 118,000 short ton harvest limit

2017 Landings: 137,671,129 lbs (62,446.57 mt); Value \$68,726,265 ex vessel

2018* Landings: 73,145,367 lbs (33,178.5 mt); Value: \$35,767,673 ex vessel

2019* Landings: 27,198,474 lbs (12,337.14 mt); Value: \$13,434,163 ex vessel

*Note: the sharp decline in CA squid landings during 2018-19 was again strongly influenced by El Niño warm-water ocean conditions, which, as usually occur in these conditions, shifted market squid abundance into the Pacific Northwest. This resulted in a significant increase in squid landings in OR.

On the East Coast:

Atlantic Longfin/Loligo squid

Harvest season: Offshore September through mid-April; Inshore May through August

Available quota level: 50,555,887 lbs (22,932 mt)

2017 Harvest level: 17,993,000 lbs (8,162 mt); Value: \$23.4 million ex vessel

2018 Harvest level: 25,588,130 lbs (11,588 mt); Value: \$38 million ex vessel

2019 Harvest level: 27,213,341 lbs (12,242 mt); Value: \$39 million ex vessel

Atlantic Shortfin/Illex squid

Harvest season: May through October

Available quota: 50,518,927 lbs (26,000 mt)

2017 Harvest level: 49,612,500 lbs (22,500 mt); Value: \$22.5 million ex vessel

2018 Harvest level: 53,177,989 lbs (24,117 mt); Value: \$23.6 million ex vessel

2019 Harvest level: 54,729,757 lbs (24,825 mt); Value: \$28 million ex vessel

Monitoring/Inspections of Squid Fisheries, Processing and Trade

As referenced above, U.S. squid fisheries are carefully managed and closely monitored in their respective regions by the federal government via the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Secretary of Commerce, pursuant to his authorities over NOAA and the National Marine Fisheries Service (NMFS). In addition to monitoring by the federal government, California's squid fishery is actively managed by the CA Department of Fish and Wildlife. These fisheries are sustainably managed, they are not being overfished and overfishing is currently not occurring.

Squid are harvested by purse seine (Pacific) or trawl (Atlantic) gear on U.S.-owned/operated commercial fishing vessels on trips of short duration (e.g. typically 1 to 4 days; all within the U.S. EEZ). The vessels are subject to U.S. Coast Guard inspection and on-the-water federal observer coverage requirements by NOAA officials, and consistency with the NOAA/NMFS Office of Law Enforcement (OLE).

Product quality is commonly maintained at-sea through the use of refrigerated sea water systems. The harvest is offloaded at shore-side plants in a number of coastal States (including but not limited to California, Oregon, Massachusetts, Rhode Island, New Jersey, Virginia). There, product is subject to further processing under additional laws.

Once fresh squid are delivered to shore-side plants, product not destined for the fresh market is processed/cleaned/packed/frozen mainly for human consumption in both domestic and export markets. Market conditions vary by year, and squid products are regularly imported and exported by U.S. companies, but the majority of U.S squid being harvested and processed today (approximately 65%) is destined for export markets.

In addition to vessel monitoring requirements, squid processing plants are subject to site inspections by the Department of Commerce, Food & Drug Administration (FDA) as well as the CA Department of Fish and Wildlife, State Sanitation Departments, Bureau of Weights and Measures (scales) and even the local Fire Department. Squid processing plants are also required to meet comprehensive Hazard Analysis Critical Control Point (“HACCP”) food safety requirements. In sum, the fishery production process for squid is already monitored by federal and state governments and the products are of high quality, therefore seafood inspection by the USFWS is costly overkill and frequently threatens the timely and safe delivery of a highly-perishable product to our customers.

On the trade monitoring side, squid export shipments are tracked by the U.S. Department of Commerce (USDOC). Frozen squid are lot inspected by the USDOC. This also enables USDOC to issue health certificates required by non-EU Countries. Import documentation is checked by the FDA and U.S. Customs Service. Shipments are periodically flagged and inspected by the FDA. There is no need for additional USFWS oversight.

Added Cost of USFWS Oversight

Squid are generally considered to be a higher volume, lower value product, so any fees associated with USFWS policies and regulations add layers of costs that make U.S. products more expensive to produce and thus less competitive in the international market. This undermines U.S. trade policy and increases our trade deficit, especially with China and Japan.

Further, the Agency’s limiting of the ports that can be used for squid exporting (to conduct duplicative inspections of shipments already inspected by USDOC) may prevent companies from obtaining the best freight rates, further negatively impacting US product competitiveness abroad.

There are literally hundreds of import/export shipments, consisting of thousands of containers in the aggregate, of U.S. squid products every year, originating on both the West and East Coasts. Collectively, the U.S. companies moving these shipments are subject to many tens of thousands of dollars of additive fees, thanks to the duplicative process now required by the USFWS, and for no environmental or economic benefit to the U.S. All the costs noted below must be added to the bottom line for U.S. squid producers to export their products overseas, and to successfully compete in international markets.

Further, we understand there is growing interest among some U.S. companies to export fresh squid products, but they are unable to develop these additional business opportunities due to the overly burdensome USFWS regulations and cost of the fee system. In a real sense, the USFWS is harming the development of new U.S. products for overseas markets.

These fees should also be considered in the context of squid container shipments that range in the size of 35,000 pounds to 55,000 pounds (per container) with prices ranging from \$25,000 to \$150,000 (depending on the species and market grade). As such, the size of these shipments far exceeds the Agency’s current exemption for “trade in small volumes of low-value non-federally protected wildlife parts and products” applicable to wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is \$5,000 or less.

Please consider:

- Every U.S. company exporting/importing squid must secure a USFWS license at a cost of \$100.
- There is a \$93 USFWS base inspection rate for EACH squid shipment leaving/entering the U.S.
- In addition, there is a \$53 per hour overtime (OT) fee that some companies may be required to pay the USFWS. This is particularly impactful on some West Coast companies where approximately 90% of shipments are loaded on a Thursday/Friday and sail on the following Sunday/Monday. This may lead to thousands of dollars in OT payments to the federal government for a redundant layer of seafood inspection.

- The USFWS allows U.S. companies to only ship squid through designated ports. Any shipments not going through a port on the official list are subject to an added “non-designated port inspection fee” of \$146 per shipment. There are also Agency time requirements for advance notice, and any inspection delays may also negatively impact the buyer process under rapidly changing market conditions.
- These U.S. companies must also pay staff time and hire freight firms to manage the USFWS paperwork requirements.

We thank you for this opportunity to seek the Council’s support for including a recommendation to the Administration to exempt squid species from USFWS wildlife import/export requirements, in response to the opportunities provided to U.S. seafood producers by EO 13921. We greatly appreciate your consideration of this request. Please do not hesitate to contact me, or any of the squid processors signatory to this letter, for additional information.

Best regards,



Diane Pleschner-Steele
Executive Director

On behalf of California squid producers:

Tri-Marine Fish Company
Sun Coast Calamari
Marcus Foods
Del Mar Seafood

Monterey Fish Company
Moss Landing Seafoods
Neptune Foods
(Fishermen’s Pride Processors)

SoCal Seafood
California Seafoods
Southern Coast Fisherie