

July 28, 2020  
Dr. Chris Moore  
Executive Director  
Mid-Atlantic Fishery Management Council  
800 North State Street, Suite 201, Dover, DE 19901

**RE: Request for Inclusion of a Squid Species Exemption from Duplicative and Burdensome USFWS Regulations, in the Council's Identification of Important Regulatory Reforms Pursuant to Executive Order (EO) 13921 Promoting American Seafood Competitiveness and Economic Growth**

Dear Dr. Moore:

We learned during the May 27-28 meeting of the Regional Fishery Management Councils' Council Coordinating Committee we first heard that the National Marine Fisheries Service (NMFS) will be surveying the Councils to gather ideas to reduce regulatory barriers negatively affecting American seafood competitiveness, consistent with EO 13921.

After listening to your report on the EO to the Council last month, and receiving your recent EO Comment Form announcement, we understand that the Council is now actively soliciting ideas. We were pleased to hear your response to Council Member Dewey Hemilright's question about the possibility of HMS ideas being solicited, even though those regulatory constraints lie outside the Council's immediate jurisdiction.

With this in mind, we are asking the Council to support recommending to NMFS the reform of a U.S. Fish & Wildlife Service (USFWS) Loligo and Illex squid fishery regulatory issue, which is having serious negative economic and competitive effects on our businesses. The issue is directly related to the inclusion of squid fishery products in a USFWS inspection and user fee system established for monitoring the import and export of certain types of protected wildlife products (at 50 CFR 14).

NMFS has taken a position in opposition to the USFWS' justification for including U.S.-produced squid species as part of these program in the past, including most recently in Congressional testimony in 2016. Encouraging NMFS and USFWS to reform this program will not require any changes to the Council's Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP).

These USFWS policies and regulations require squid producers to ship U.S. squid only from designated ports, and pay duplicative inspection fees, paperwork fees, and license fees; all leading to higher costs for our goods and delays in the shipment of our perishable seafood products year-round.

The USFWS regulations in question are 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 fully recognize this issue has joint agency ramifications and that NOAA/NMFS may not have the direct authority to force a sister agency to adjust their 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 impacts small U.S.-owned businesses, and renders U.S.-produced squid less competitive in international markets, thereby exacerbating the annual \$16B seafood trade deficit (much of it with China and other Asian countries). These requirements provide zero environmental conservation benefit for U.S. interests. Furthermore, the USFWS's role in seafood inspection is redundant and provides no benefit to our 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 their 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 FWS has likewise ignored comments from NMFS in the past, as described above, attempting to correct the USFWS's false assumption that squid does not meet their definition of 'shellfish' or 'fishery product'.

Now, the MAFMC working with NOAA/NMFS and the Administration has an excellent opportunity to make a substantial difference for our industry, consistent with the intent of EO 13931, by pressing the USFWS to make a logical and reasonable change to their inspection and user fee system by exempting U.S. squid products from it.

We believe our request for an exemption from this system, through an EO 13921 lens, is warranted in order to eliminate the significant negative impacts of the overregulation of harmless edible shellfish and fishery products and redundant seafood inspection requirements imposed by the USFWS. 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 MAFMC

We believe the MAFMC should recommend to NOAA/NMFS 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 harmless food products should be defined correctly either as "shellfish" or "fishery products" (or both) and thus exempted from the system at 50 CFR Parts 10-14. U.S. east coast

squid *fisheries* are managed by the 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 Dept. of *Fish* and Wildlife. Thus, the Administration should amend this FWS policy and properly define squid as a "*fishery* product" and require the USFWS 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 these USFWS requirements and inspection fees. During the 2008 rulemaking process the USFWS received comments from the commercial fishing industry and 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 including the lead federal agency responsible for managing fisheries and seafood resources, in fact by pretty much everyone except the USFWS.

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

It is also important to recognize the Council's long-term efforts to develop measures to sustain the east coast squid fisheries, as part of the MSB FMP. Along with those efforts, our companies have been able to partner in the Marine Stewardship Council's (MSC) certification of our Atlantic Loligo and Illex squid products, which are in demand here, in Canada, Europe, and Asia.

The mission of the MSC is to use their ecolabel and fishery certification program to contribute to the health of the world's oceans by recognizing and rewarding sustainable fishing practices. By working with them, we can influence the choices people make when buying seafood and transform the world's seafood market to a sustainable future by offering top quality U.S. seafood products.

Clearly, 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 species 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' policy and associated regulations are these:

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

### California Market / Loligo squid

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

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

2018 Harvest level: 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

### 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 through the Secretary of Commerce pursuant to his authorities over NOAA and NMFS. In addition to monitoring by the federal government, California's squid fishery is actively managed by the California Department of Fish and Wildlife.

These fisheries are sustainably managed, they are not being overfished and overfishing is not occurring. In fact, the Atlantic Longfin squid fishery was the first squid fishery in the world to secure MSC certification, on May 22, 2018, and the Atlantic Shortfin (Illex) squid fishery was subsequently certified as MSC-sustainable on May 2, 2019. These certifications by a nongovernmental third-party is further evidence these fisheries are well-managed and not a threat to the marine ecosystem or U.S. commerce and thus should not require redundant USFWS oversight.

Squid are harvested by trawl (Atlantic) and purse seine (Pacific) 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 staff and contractors, in addition to compliance 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 any number of coastal States (including but not limited to Massachusetts, Rhode Island, New Jersey, Virginia and California). There, product is subject to further processing under additional laws and chain of custody protocols.

Once the fresh squid are delivered to shore-side plants, for product not destined for the fresh market, it is processed/cleaned/packed/frozen 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 and the 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 and the U.S. Seafood Trade Deficit

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 FWS's limiting of the ports which can be used for squid exporting (to conduct duplicative inspections of shipments already inspected by USDOC) prevents companies from getting the best freight rates, further negatively impacting US product competitiveness abroad.

There are hundreds of import/export shipments, consisting of thousands of containers in the aggregate, of U.S. squid products each year, originating on both the East and West coasts. Collectively, the U.S. companies moving these shipments are subject to many tens of thousands of dollars of additive fees courtesy of the USFWS and for no environmental or economic benefit to the U.S. All the costs noted below must be added to the costs that U.S. squid producers must pay to export their products overseas while they attempt to successfully compete in international markets.

Furthermore, we understand there is growing interest among some U.S. companies to export fresh squid products, particularly to Canada, 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 very real sense, the USFWS is also harming the development of new U.S. products for export markets.

These fees should also be considered in the context of squid container shipments which range in the size of 35,000 pounds to 55,000 pounds (per container) with values 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" which requires 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.

- 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 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 FWS 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 the USFWS wildlife import/export requirements, in response to the opportunities provided to U.S. seafood producers by EO 13921. We truly appreciate your consideration of our request. Please do not hesitate to contact any of us for additional information.

Respectfully submitted,

*Jeff Reichle*

Jeffrey B. Reichle  
Chairman  
Lund’s Fisheries, Inc.

*Meghan Lapp*

Meghan Lapp  
Fisheries Liaison, Gen Mgr.  
Seafreeze, Ltd, Seafreeze Shoreside

*Ryan Clark*

Ryan G. Clark  
President & CEO  
The Town Dock

**Attachment:** *The following memo summarizing this issue, and a copy of this letter, were provided to Interior Secretary Bernhardt at a Roundtable Discussion in Boston, July 21, 2020.*

**USFWS IMPORT/EXPORT REGULATIONS FOR SHELLFISH & FISHERY PRODUCTS ARE HARMING U.S. SEAFOOD COMPANIES**

The USFWS regulates the trade of shellfish and fishery products under the wildlife laws enforced by the Agency at 50 CFR 14. The Agency provides exemptions from these import/export regulations for certain shellfish and non-living fishery products if they are for human or animal consumption and the species is not listed as injurious under the Lacey Act (50 CFR Part 16), does not require a permit under the Endangered Species Act (50 CRF Part 17), or is not listed under CITES (50 CFR 23).

The USFWS has the authority to determine whether a species meets the definition of “shellfish or fishery product” in the context of these regulations and provide exemptions for such products. Despite these possible exemptions -- the Agency continues to apply costly and unworkable import/export requirements on U.S. edible squid products. The products are not ESA/CITES-listed, are not considered injurious, and pose no threat to the environment. They are fishery products intended for human consumption, plain and simple.

On December 9, 2008 the USFWS published a final rule (73 FR 74615) to revise subpart I – Import/Export Licenses of 50 CFR14 to clarify license and fee requirements and revise statutory exemptions. The U.S. commercial fishing industry and NOAA/NMFS had commented on the proposed changes with respect to the inclusion of shipments of squid products. Both the fishing industry and NOAA/NMFS questioned the USFWS interpretation of the definition of “shellfish” (i.e. aquatic invertebrates with a shell) and noted the USFWS inconsistencies with FAO’s inclusion of squid species in the class Cephalopoda as shellfish. In the final rule the USFWS agreed the organisms were indeed mollusks but chose not to consider them to be aquatic invertebrates with a shell as per the existing USFWS definition of shellfish.

Furthermore, the Agency has refused to consider (and exempt) squid products as “fishery products”, a policy decision that defies logic. Thus, the USFWS is treating edible domestic frozen squid for human consumption exactly as they treat Lacey Act-listed injurious and invasive zebra mussels and Chinese mitten crabs, CITES-listed paddlefish and queen conch, ESA-listed fresh water mussels, and fertilized salmonid & trout eggs.

Based on questionable interpretations of “shellfish and fishery products” the USFWS continues to charge individual U.S. seafood companies tens of thousands of dollars each year in license fees, employee paperwork time, fines, storage, delays and travel/overtime for Agency employees to overregulate a harmless U.S. seafood product.

Here is just one example of the USFWS flawed and burdensome system, there are many. The Agency requires at least a 48-hour notice prior to an export shipment but will not clear a shipment until it gets close to the export date. Companies that have provided the Agency with as much as a 10-day advance notice do not see their export clearances until after the “port cut” – the last day a company can deliver a full container to the terminal in order to load the vessel that has been booked for the delivery. If a company misses a port cut they are paying \$500-600 per day until the container boards the next vessel (about 9 days). Terminals are typically open for receiving just 2-3 days prior to the port cut and there is just a 3-4 day window to deliver loaded containers. If a company must wait for Agency clearance to begin the loading process they will miss every shipment because the Agency cannot provide timely approvals until after the port cut.

In addition, if the Agency rejects a container on the basis they want to inspect the contents they require a company to deliver the loaded container to a bonded warehouse at the company’s expense. Timing is critical when we are delivering refrigerated cargo due to its perishable nature. The Agency process is last minute and structured in a way that makes it impossible to load the vessel as customers require which can also result in added costs per container. Here are a few of the costs enumerated below --

Carrier detention: \$300/day for 9 days. \$2700  
Chassis use: \$35/day for 9 days. \$315  
Storage at trucker’s yard: \$150/day for 9 days. \$1350  
Rolled booking charge: \$500



Trucking to Bonded Cold Storage: \$1200

Last Minute Appointment at Bonded Cold Storage: \$1000

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 our trade deficit, especially with China and Japan.

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

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

In conclusion, we believe President Trump's recent Executive Order 13921 designed to remove unnecessary regulatory burden on the U.S. seafood industry and promote trade opportunities should be the tool by which the USFWS exempts domestic squid products from costly and unworkable inspections, licenses and user fees.

We also believe Congress did not intend for the USFWS to interject unscientific policy decisions into our national seafood inspection system, especially for shellfish and fishery products that are not a protected species and pose no threat to the environment.

The USFWS has no justifiable reason to treat U.S. squid products differently than other edible fishery products and should include squid products in the regulatory definition of "shellfish & fishery products" at 50 CFR-Chapter1-Subchapter B-Part 14.21(a)(1) and exempt these products from the inspections, licenses and user fees.

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